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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Diane S. Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

POLO K. SALAZAR,

APPELLANT

APPELLATE CASE NO 2022-001066

RECORD ON APPEAL

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INDEX

INDEX	i
PRE-TRIAL MOTIONS HEARING TRANSCRIPT DATED MAY 7, 2021	1
<u>JACKSON V. DENNO HEARING</u>	107
TESTIMONY	
JONATHAN DAVIS	
Direct Examination by Mr. Osborne.....	108
Cross-Examination by Ms. Hubrich	118
Re-Direct Examination by Mr. Osborne.....	140
COLLOQUY.....	145
RULING BY THE COURT.....	153
TRIAL TRANSCRIPT DATED MAY 11-19, 2021	177
PRE-TRIAL MOTIONS.....	196
JURY VOIR DIRE (FIRST PANEL).....	200
JURY VOIR DIRE (SECOND PANEL).....	227
MATTER OF LAW	244
JURY VOIR DIRE (THIRD PANEL).....	254
MOTION TO STRIKE JUROR FOR CAUSE.....	271
RULING BY THE COURT.....	272
MOTION TO STRIKE JUROR.....	273
RULING BY THE COURT.....	273
JURY VOIR DIRE (FOURTH PANEL).....	275
JURY VOIR DIRE (FIFTH PANEL).....	297
MOTION TO QUASH THE JURY PANEL.....	322
RULING BY THE COURT.....	323

JURY SELECTION.....	324
OPENING STATEMENT BY MS. GLOVER.....	346
OPENING STATEMENT BY MS. HUBRICH.....	350
OPENING STATEMENT BY MS. CORNWELL.....	355
TESTIMONY	
LETA BOEHLER	
Direct Examination by Ms. Glover.....	360
Cross-Examination by Ms. Hubrich	369
Cross-Examination by Ms. Cornwell.....	381
Redirect Examination by Ms. Glover	384
Recross-Examination by Ms. Hubrich.....	386
Recross-Examination by Ms. Cornwell	388
CHRISTINA DENSON	
Direct Examination by Ms. Glover.....	389
Cross-Examination by Ms. Cornwell.....	392
MARCUS PORTER	
Direct Examination by Mr. Osborne.....	393
MATTER OF LAW	426
RULING BY THE COURT.....	429
TESTIMONY	
MARCUS PORTER (CONT'D)	
Direct Examination by Mr. Osborne.....	430
MATTER OF LAW	452
MATTER OF LAW	455
TESTIMONY	
MARCUS PORTER (CONT'D)	
Cross-Examination by Ms. Hubrich	461
MATTER OF LAW	476

TESTIMONY

MARCUS PORTER

Cross-Examination by Ms. Hubrich	503
Cross-Examination by Ms. Cornwell.....	526
Re-Direct Examination by Mr. Osborne	538

JAMES GREEN

Direct Examination by Mr. Osborne.....	547
Cross-Examination by Mr. Wehman	563

JOSHUA SCARBOROUGH

Direct Examination by Mr. Osborne.....	565
Cross-Examination by Ms. Hubrich	577

JACOB ANTHONY CRAMER

Direct Examination by Mr. Osborne.....	579
Cross-Examination by Ms. Hubrich	606
Cross-Examination by Ms. Cornwell.....	606

MATTER OF LAW	608
---------------------	-----

TESTIMONY (IN-CAMERA)

RYAN DEWANE

Direct Examination by Mr. Osborne.....	609
Cross-Examination by Mr. Wehman	634
Cross-Examination by Ms. Cornwell.....	646
Re-Direct Examination by Mr. Osborne	653
Recross-Examination by Mr. Wehman.....	656
Direct Examination by The Court.....	658

MATTER OF LAW	662
---------------------	-----

TESTIMONY

VERA MARTINEZ

Direct Examination by Mr. Osborne.....	683
Cross-Examination by Ms. Cornwell.....	688

BETHANY DAVIDSON

Direct Examination by Ms. Glover.....	689
Cross-Examination by Ms. Cornwell.....	694

JACKIE DAVIS

Direct Examination by Ms. Glover	696
Cross-Examination by Mr. Wehman	708
Cross-Examination by Ms. Cornwell.....	714
Re-Direct Examination by Ms. Glover	717
Recross-Examination by Mr. Wehman.....	718

DAVID SWIBAKER

Direct Examination by Mr. Osborne.....	719
Cross-Examination by Ms. Hubrich	737
Cross-Examination by Ms. Cornwell.....	742
Re-Direct Examination by Mr. Osborne.....	747

JAMIE HALL

Direct Examination by Ms. Glover	748
Cross-Examination by Mr. Wehman	754
Cross-Examination by Ms. Cornwell.....	756
Re-Direct Examination by Ms. Glover	758
Recross-Examination by Mr. Wehman.....	759

PHILLIP M. MOY

Direct Examination by Mr. Osborne.....	760
Cross-Examination by Ms. Hubrich	766
Cross-Examination by Ms. Cornwell.....	775
Re-Direct Examination by Mr. Osborne.....	782
Recross-Examination by Ms. Hubrich.....	791
Recross-Examination by Ms. Cornwell	793

MATTER OF LAW	795
---------------------	-----

MATTER OF LAW	826
---------------------	-----

TESTIMONY

MATTHEW ADAM BROOKS

Direct Examination by Mr. Osborne.....	827
Cross-Examination by Ms. Hubrich	882
Cross-Examination by Ms. Cornwell.....	893
Re-Direct Examination by Mr. Osborne.....	901
Recross-Examination by Ms. Hubrich.....	905

SALINA SHEPPARD

Direct Examination by Ms. Glover	907
Cross-Examination by Ms. Cornwell.....	914

RACHEL L. NGUYEN	
Direct Examination by Mr. Osborne.....	915
Cross-Examination by Mr. Wehman	935
Cross-Examination by Ms. Cornwell.....	938
MATTER OF LAW	940
TESTIMONY (IN-CAMERA)	
RYAN DEWANE	
Direct Examination by Mr. Osborne.....	949
Cross-Examination by Mr. Wehman	951
Re-Direct Examination by Mr. Osborne	955
RULING BY THE COURT.....	958
TESTIMONY	
RYAN DEWANE	
Direct Examination by Mr. Osborne.....	962
Cross-Examination by Ms. Cornwell.....	981
Re-Direct Examination by Mr. Osborne.....	983
Recross-Examination by Ms. Cornwell	985
NICOLE HARDIN	
Direct Examination by Mr. Osborne.....	986
Cross-Examination by Mr. Wehman	997
Cross-Examination by Ms. Cornwell.....	1001
Re-Direct Examination by Mr. Osborne	1003
Recross-Examination by Mr. Wehman.....	1009
Recross-Examination by Ms. Cornwell	1011
JONATHAN DAVIS	
Direct Examination by Mr. Osborne.....	1011
MATTER OF LAW	1038
JONATHAN DAVIS (CONT'D)	
Direct Examination by Mr. Osborne.....	1046
Cross-Examination by Ms. Hubrich	1051
Cross-Examination by Ms. Cornwell.....	1091
NICHOLAS I. BATALIS	
Direct Examination by Mr. Osborne.....	1113
Cross-Examination by Ms. Cornwell.....	1127

STATE RESTS	1128
MOTION FOR DIRECTED VERDICT	1129
RENEWAL OF ALL MOTIONS	1129
RULINGS BY THE COURT	1129
MOTION FOR DIRECTED VERDICT	1129
RENEWAL OF ALL MOTIONS	1131
RULINGS BY THE COURT	1131
DEFENSE FOR MR. FORTUNE RESTS.....	1133
DEFENSE FOR MR. SALAZAR RESTS.....	1133
CLOSING ARGUMENT BY MR. OSBORNE	1135
CLOSING ARGUMENT BY MS. HUBRICH	1166
CLOSING ARGUMENT BY MS. CORNWELL	1177
CHARGE ON THE LAW	1193
JURY NOTE	1222
ADDITIONAL CHARGE ON THE LAW.....	1223
ALLEN CHARGE	1228
VERDICT	1231
JURY POLL.....	1233
MOTION TO SET ASIDE JURY VERDICT	1240
RULING BY THE COURT.....	1241
SENTENCING	1253
POST-TRIAL MOTIONS HEARING TRANSCRIPT DATED JUNE 24, 2022.....	1257
ORDER DENYING DEFENDANT’S MOTION FOR A NEW TRIAL.....	1281

INDICTMENTS	1282
SENTENCE SHEETS	1294
CERTIFICATE OF COUNSEL	584

THE FOLLOWING EXHIBIT IS ON FILE WITH THE COURT:

STATE’S EXHIBIT NO. 191 (DISK (FORTUNE INTERVIEW, CLIPPED))

1 Q To quantify the amount of GSR that are finding, are you just
2 saying that there is particles, I think you said antimony, lead
3 and barium. You're saying, I found that. You're not saying how
4 much you found. Correct?

5 A I am saying that for the result that has multiple, I'm
6 saying there was multiple particles found. And then for the one
7 that says one particle, then that one result was one particle.

8 Q One particle, or just more than one, so two or more?

9 A Yes, sir.

10 ATTORNEY WEHMAN: The Court's indulgence, Your Honor.

11 THE COURT: Yes.

12 ATTORNEY WEHMAN: One more question, Judge.

13 Q I have used the term GSR multiple times. Just to be clear,
14 we're talking about gunshot residue. When someone says GSR, is
15 that what that means to you?

16 A Yes, sir, gunshot residue.

17 ATTORNEY WEHMAN: Thank you, Judge.

18 THE COURT: Thank you. Yes, ma'am?

19 **CROSS-EXAMINATION**

20 BY ATTORNEY CORNWELL:

21 Q Ms. Hardin, the only thing that you tested in this case for
22 GSR are the jackets. Correct?

23 A Yes, ma'am.

24 Q You didn't check any gloves for GSR?

25 A I was not submitted any gloves.

1 Q Correct me if I'm wrong with my understanding of GSR.
2 Particularly when it's on clothing, GSR will remain on clothing
3 until it's washed off or physically removed. Correct? There's
4 no fungible time limit where it will dissipate, or disappear,
5 after a certain amount on clothing; correct?

6 A It will remain on clothing until it is removed.

7 Q Indefinitely until removed/washed?

8 A Yes, ma'am.

9 Q So, for instance, if somebody went hunting the prior week or
10 even prior month, or even the prior year, and hadn't washed that
11 shirt, you would still be able to find gunshot residue on that
12 shirt if they fired a gun?

13 A That's a possibility.

14 Q So just by finding gunshot residue on clothing, you can't
15 tell when it was placed on that clothing, how it was placed on
16 that clothing, if it's because of somebody shooting a firearm, if
17 it's because it's transferred or if it was because it was put on
18 there a year ago? You're just saying that there is GSR on an
19 item of clothing?

20 A When I say that I found the particles of gunshot primer
21 residue, they -- can you repeat your question for me, please?

22 Q Sure. So all you're saying when you say that there's GSR on
23 an article of clothing is that, at some point in time, somewhere,
24 somehow this article of clothing came into contact with GSR or
25 was in the vicinity of where a gun was fired?

1 A Yes, ma'am. When I find the particles, we're testing for
2 presence or absence. And then the inanimate objects, such as the
3 clothing, I can only tell you that it got there by either being
4 in the vicinity to the discharge of a firearm or from coming into
5 contact from something that has gunshot residue on it.

6 Q And that could have been as long as a year ago if it hadn't
7 been washed?

8 A Yes, ma'am.

9 ATTORNEY CORNWELL: Thank you, Your Honor. No further
10 questions.

11 THE COURT: Thank you. Redirect?

12 ATTORNEY OSBORNE: Briefly, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY ATTORNEY OSBORNE:

15 Q I don't think I asked you this. Let's go back to State's
16 201. Do you, in your notes, have the locations in which the
17 gunshot primer particles were recovered from on the garments in
18 your notes?

19 A Are you referencing ---

20 Q I'm asking you. We're going to go to State's 201, but I
21 think we're going to go through each one of them. Do you have
22 that in your notes?

23 A Will you repeat your question?

24 Q Do you, in your notes, have the location in which the
25 particles of gunshot residue were recovered from the items?

1 A Where they were collected from, what particle lifts were
2 found from which location?

3 Q Right.

4 A That's correct.

5 Q I guess what I'm looking at, where they were recovered from
6 the back, where they were recovered from the sleeves, where they
7 were recovered from the chest. Do you have that?

8 A I believe I have what you're talking about.

9 Q Let's start with 201.

10 A Do you have the SLED lab number?

11 Q Oh, I'm sorry. Twenty-nine. I'm sorry. Go ahead.

12 A For item ---

13 ATTORNEY WEHMAN: Judge, I would object to hearsay to this
14 testimony.

15 ATTORNEY CORNWELL: Same objection, Your Honor.

16 ATTORNEY OSBORNE: This is the results of her findings.

17 ATTORNEY CORNWELL: Your Honor, may we approach?

18 THE COURT: Sure.

19 (WHEREUPON, an off-the-record discussion is held at
20 sidebar.)

21 Q When you are conducting gunshot primer residue analysis, are
22 you provided with information that tells you where the samples,
23 whether they come back positive or not, were taken from a
24 particular garment?

25 A Yes.

1 Q And what is that, what is that form?

2 A It is the SLED Trace Evidence GSR Collection from Clothing
3 Worksheet. It ---

4 Q And -- I'm sorry.

5 A It is filled out by the person who collects off of the
6 clothing that was submitted. In this instance, in this case, it
7 was processed by Jamie Hall, who is our forensic technician. So
8 since she collected the particle lift off of the clothing, she
9 filled out this worksheet, as she did that.

10 On this clothing worksheet it has information such as the
11 container, was it sealed and initialed, the item number, a
12 description of the item that she is collecting from, the brand,
13 size, the location of where she put her initials in the item, the
14 container that she puts the particle lifts into, their new item
15 number, and the location that the particle lifts were collected
16 from.

17 So, for example, item 25, the camouflage hoodie ---

18 ATTORNEY WEHMAN: Objection.

19 Q We'll get there.

20 A Okay.

21 Q This worksheet, that provides information to say where the
22 particle lifts were taken from from the particular garment?

23 ATTORNEY WEHMAN: Objection. Leading.

24 ATTORNEY OSBORNE: Well, I think she just said that. I was
25 just kind of repeating it.

1 THE COURT: Well, don't lead.

2 Q Is that the type of information -- in addition to what you
3 testified to, is that the type of information that's included in
4 that worksheet?

5 A The location for where the particle lifts were collected
6 from is on this worksheet.

7 Q Is that the type of information upon which experts in your
8 field rely upon when they report the findings of GSR testing?

9 A Will you repeat your question, please?

10 Q Is that the type of information, the worksheet, that experts
11 in your field in GSR analysis rely on when they're reporting
12 their findings?

13 A This is a worksheet that I use with my report analysis.

14 Q And are you the only person in the field that does that, or
15 is this a common method of reporting GSR?

16 A Anything that is done to the garment, so in this case the
17 particle lifts that were collected from it, will be documented.
18 And in this case, in our lab, we have a worksheet. I do not
19 specifically know for other labs if they use a worksheet that is
20 similar to this or not. However -- well, I can only tell you
21 what I've done.

22 Q Are there other experts -- are you the only GSR expert in
23 your lab?

24 A No, sir.

25 Q Do other experts in your lab rely upon the information

1 that's included in that worksheet when they're reporting their
2 results?

3 A We use this worksheet to see where the particle lifts were
4 collected from, what this item of clothing is, what my, what the
5 new container is. For instance, we saw container L earlier.
6 That contained all of the particle lifts. That is what I'm
7 given.

8 If I do not process that item of clothing, which I did not
9 in this case, the forensic technician Jamie Hall did, since I did
10 not see that, I rely on this worksheet to tell me exactly what
11 she did and where she took things from.

12 Q Okay.

13 ATTORNEY OSBORNE: Your Honor, at this time I would seek to
14 go on with that testimony.

15 THE COURT: Yes.

16 Q All right. Showing you State's 201. And you testified
17 earlier that there was gunshot residue found on this item. Can
18 you tell the jury the location in which gunshot residue was found
19 on this item?

20 A What is the lab number? I can't read. It's on the corner
21 of that picture, but I can't read it.

22 Q I'm sorry. SLED lab no. 29.

23 A For SLED lab no. -- for this item, item 29, it was the black
24 jacket. Both sides of this jacket were collected from. So the
25 particle that was found was found on black jacket, side one, on

1 the right sleeve.

2 Q Do you have a notation to indicate whether it was the front
3 of the right sleeve or the back of the right sleeve?

4 A No.

5 Q And what jacket did this become, or was it labeled as
6 belonging to?

7 A This item was one black Special Forces Operational
8 Detachment jacket, submitted as belonging to Devonte Major.

9 Q All right. Let's move on to State's 202, this will be your
10 SLED item no. 25. Do you have the locations in which, on this
11 garment, upon which the gunshot primer residue came back as
12 positive?

13 A Yes, sir. From the right chest, right sleeve, left chest
14 and left sleeve.

15 Q Anything from its back?

16 A The back was not particles, it was not collected from.

17 Q Not collected. Moving on to 203, your 27. Did you find, or
18 can you tell us the locations here again for gunshot primer
19 residue?

20 A Item 27, the right chest, right sleeve, left chest and left
21 sleeve.

22 Q Right sleeve -- I'm sorry, say that one more time. I'm
23 sorry.

24 A The right chest, right sleeve, left chest and left sleeve.

25 Q Okay. Left chest, right chest, right sleeve, left sleeve.

1 204, this is your item 28. Same question.

2 A Black Chaps jacket. From the right sleeve and the left
3 sleeve.

4 Q Right sleeve and left sleeve, okay. And lastly, 205,
5 your 26.

6 A From the right chest, left chest and left sleeve.

7 Q Okay.

8 ATTORNEY OSBORNE: No further question.

9 THE COURT: All right. Yes, sir, recross?

10 ATTORNEY WEHMAN: Thank you, Judge.

11 **RECROSS-EXAMINATION**

12 BY ATTORNEY WEHMAN:

13 Q Now this information that you're reading from right now, can
14 you tell me again what that document is?

15 A The SLED Trace Evidence Gunshot Primer Residue Analysis
16 Results Worksheet.

17 Q So this worksheet, would this be something that would
18 typically be provided to the state in discovery with a report?

19 A This worksheet would be provided in my bench notes.

20 Q Do you know if they were provided in this case?

21 A I am not sure.

22 Q Would you mind if I took a look -- I've never seen what
23 you're looking at. Do you mind if I take a look at the worksheet
24 that you have there?

25 THE COURT: You may.

1 ATTORNEY WEHMAN: Judge, I was going to ask if I can
2 approach.

3 THE COURT: You certainly may.

4 ATTORNEY WEHMAN: Thank you, Judge.

5 Q You can sit it here if you don't know want me to touch your
6 binder. I know it's an odd time. I don't want to make you
7 uncomfortable.

8 THE COURT: Have you both vaccinated? If you've both been
9 vaccinated, everybody needs to relax. If you're just a one-er, a
10 little caution.

11 ATTORNEY WEHMAN: I'm a one-er. Next week, Judge.

12 THE COURT: Fantastic.

13 A May I explain that to you?

14 Q Sure.

15 A So this document, it just has the location of where the
16 prior worksheet that I explained, the clothing collection
17 worksheet, this has the location that were taken from there. It
18 lists them all out since that is the locations that were being
19 tested. And it has the number of particles that I found and
20 their location.

21 Q And specifically item 27, can you show me that one? Is this
22 by item?

23 A Yes, sir.

24 Q There was no sample taken from the back in any of these?

25 A No, sir. That's not in the normal location that we collect

1 from.

2 ATTORNEY WEHMAN: Thank you, Judge.

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

4 **RECROSS-EXAMINATION**

5 BY ATTORNEY CORNWELL:

6 Q But again, you're not testifying as to when any of these
7 items actually came into contact with any gunshot residue?

8 A No, ma'am, I cannot provide times.

9 ATTORNEY CORNWELL: Nothing further, Your Honor.

10 THE COURT: All right. Is this witness free to leave, and
11 is there any objection? Thank you so much, you're free to go.
12 Thank you.

13 Call your next witness, please.

14 ATTORNEY OSBORNE: It's going to be Detective Jonathan
15 Davis.

16 LAW CLERK: If you'll please raise your right hand, and
17 state your full name for the record.

18 THE WITNESS: Jonathan Davis.

19 JONATHAN DAVIS,

20 Having first been duly sworn, was examined and testified as
21 follows:

22 **DIRECT EXAMINATION**

23 BY ATTORNEY OSBORNE:

24 Q All right, detective. What is your name?

25 A Jonathan Davis.

1 Q And where do you work?

2 A Summerville Police Department.

3 Q All right. How long have you been with the Summerville
4 Police Department?

5 A Since January of 2017.

6 Q All right. Any prior law enforcement experience?

7 A I've been in law enforcement for about 20 years. Began my
8 career in 2001 at the St. Lewis Metropolitan Police Department in
9 St. Lewis, Missouri. I moved across the river to Illinois, the
10 Springfield Park Police. And then down here to South Carolina
11 since 2015.

12 Q Okay. All right. So since 2015 what have been some of your
13 various assignments while you've been with the Summerville Police
14 Department?

15 A At Summerville Police Department, I worked patrol. I was a
16 resource officer at the high school. I've also been in criminal
17 investigations as a detective, a detective corporal. And now I'm
18 a detective sergeant.

19 Q All right. Have you received any specialized training in
20 law enforcement that's applicable to this case?

21 A Applicable to this case specifically, I've been through
22 basic and advanced interview and interrogation courses,
23 approximately 40 hours' worth.

24 Also, I'm a certified Cellebrite Examiner, that would be a
25 certified Cellebrite operator and physical analyst. And that's

1 related to digital forensics on cellphones.

2 Q Downloading cellphones?

3 A Correct.

4 Q All right. Let's go back to the night of this incident.

5 Were you working or were you called in?

6 A I was called in.

7 Q And what was your assignment then?

8 A I was a detective in general investigations.

9 Q Okay. And did your role in this investigation change at
10 some point?

11 A It did. I was originally the assisting case agent. So
12 anytime we have a major case, it's assigned a case agent and
13 assistant. In this case, Detective Moy was the case agent and I
14 was the assistant. When he departed the agency to go work for
15 Charleston, I became the case agent.

16 Q And so even after Moy left sometime after this, the case is
17 still assigned to someone else? Is that fair to say?

18 A Correct.

19 Q Okay. And that would be you?

20 A That is I.

21 Q All right. So as a case agent in this case were you
22 interested in identifying some of the times of the events?

23 A I was. I felt that was important.

24 Q Did you ever go back and clock how long it would take you to
25 drive from [REDACTED] Myrtle Place, the location of the murder, to Fripp

1 Lane, the location Officer Scarborough first saw the Honda?

2 A I did.

3 Q And how long did it take you to get from that location to
4 where the Honda was first seen?

5 A A little under three minutes.

6 Q Little under three minutes?

7 A Yes, sir.

8 Q Okay. Now, we have heard testimony that the 911 call came
9 in at 12:03:27.

10 A That is correct.

11 Q What time do you estimate that the suspects left out the
12 back door?

13 A I would estimate probably 12:03, 12:02:50, somewhere in that
14 neighborhood.

15 Q Okay. So about 30, maybe 40 seconds, before the call came
16 in?

17 A Correct.

18 Q And where are you getting that from?

19 A I believe Mr. Porter testified, and it's also in the 911
20 calls, he heard the subjects jumping off of the back fence as he
21 was running to the neighbor's phone, or the neighbor's house to
22 call 911.

23 In speaking with the neighbor, she also stated that she --
24 My neighbor just came here.

25 Q Okay. I'll come back to these times here in a second.

1 Never mind, we'll do it now. I'm going to show you State's 3.

2 And can you turn to the page 4 on State's 3.

3 A You said page 4?

4 Q Yeah, page 4, under the comment, complainant advised her
5 neighbor just came. What does that comment say?

6 A At 12:04 and 26 seconds it was noted complainant advised ---

7 ATTORNEY HUBRICH: Objection, Your Honor. Hearsay.

8 ATTORNEY OSBORNE: Business records exception. This has
9 already been authenticated.

10 THE COURT: It's been admitted.

11 ATTORNEY OSBORNE: We reached an agreement we would not
12 admit it; we would just publish information from it.

13 THE COURT: Is this from the 911 tape?

14 ATTORNEY OSBORNE: This is from the CAD, yes, ma'am. The
15 CAD.

16 ATTORNEY HUBRICH: This is the CAD report, Your Honor. And
17 it's actually hearsay within hearsay.

18 THE COURT: Right.

19 ATTORNEY HUBRICH: At this point.

20 THE COURT: Right. Right. But as I -- come here.

21 (WHEREUPON, an off-the-record discussion is held at
22 sidebar.)

23 Q So under the comments under page 4, complainant advised her
24 neighbor. And what does it say after that?

25 A It says, Complainant advised her neighbor Marcus just came

1 to her residence -- excuse me, it says his residence -- advising
2 he was shot, his roommate and dog were shot.

3 Q And you said that that was at 12:04:26; correct?

4 A Correct, sir.

5 Q But we've already heard testimony that if you go to the
6 first page the actual time of the 911 call is?

7 A 12:03:23.

8 Q Okay. All right. Now, you were here yesterday when Officer
9 Moy testified. Is that correct?

10 A Friday, correct.

11 Q And Ms. Cornwell asked Officer Moy, Through your
12 investigation, was evidence that the Honda -- was there evidence
13 that the Honda came from Q?

14 A I believe he testified that one of the defendants told him
15 that.

16 Q That one of the defendants told him that?

17 A That's correct.

18 Q Did you have other evidence that suggested that maybe that
19 particular defendant was lying to you?

20 A Yes. I have contradictory statements from a different
21 defendant.

22 Q So let's get into the case. So you were called in. Where
23 did you first respond?

24 A I first went to the scene. I wasn't there very long. I was
25 told that the defendants were taken into custody after the

1 pursuit and that they were en route to the station for
2 interviews.

3 Q And did you respond to the station?

4 A I did immediately.

5 Q Okay. I'm going to show you 193 and 195 through 197. Some
6 of these may be in already. While you were at the station did
7 you have occasion to come to -- well, did you see defendants at
8 the station?

9 A I did. I saw all four of them.

10 Q They were already taken into custody at that time?

11 A Yes, sir.

12 Q Can you look take a look at those items and tell me if you
13 are able to identify them. If we need to cut into them, we can
14 cut into them.

15 A 193 is a listed as a black jacket worn by Major. 196, black
16 jacket worn by Green with the biohazard vomit on it. 197, also
17 black jacket worn by Green with biohazard vomit. And a black
18 sweatshirt worn by Fortune, 195.

19 Q 195. And we're going to get into that in a little bit here
20 in a second.

21 ATTORNEY OSBORNE: But at this time, Your Honor, I'd seek to
22 admit 193, 195, 196 and 197.

23 THE COURT: All right.

24 ATTORNEY HUBRICH: Yes, ma'am. This officer has not
25 testified that he collected it. We had nobody testify that they

1 collected this. The only person that's testified is somebody
2 that said, I don't know who collected this shirt and I can't
3 testify as to the propriety of the collection of it.

4 And so at this point I'm objecting to chain.

5 THE COURT: Gotcha. All right. And you would just join in
6 that; is that correct?

7 ATTORNEY CORNWELL: Yes, Your Honor. And my continuing
8 objection over bringing in evidence.

9 ATTORNEY HUBRICH: And my objection pertains to 195, which
10 is allegedly my client's sweatshirt, Judge.

11 THE COURT: Gotcha.

12 ATTORNEY CORNWELL: And 194.

13 THE COURT: Gotcha.

14 ATTORNEY OSBORNE: I think 194 is already in evidence. And,
15 well, if they're not objecting to the other ones, then we can
16 talk about 195 in a minute, and 194's already in evidence.

17 (WHEREUPON, State's Exhibit 193, 196 and 197 are admitted
18 into the record.)

19 THE COURT: Okay. Go right ahead.

20 Q Okay. You said you responded to the station?

21 A Yes, sir.

22 Q And when you were at the station did you have the
23 occasion -- well, what's the first thing that happened when you
24 got to the station?

25 A Briefed on updates, who was coming in as far as the arrival

1 of the defendants, updates on the chase in the case. And at that
2 point, we selected interviewees.

3 Q I'm going to need you to just speak up a little bit.

4 THE COURT: Yeah, I'm having trouble.

5 A At that point we selected interviewees, who we were going to
6 interview.

7 Q Did you have the occasion to speak to that guy, Fortune?

8 A I did, Mr. Fortune.

9 Q Now, do you know what about what time Fortune was brought to
10 the station?

11 A He came directly from the pursuit, so the drive time from
12 Colleton County to Summerville. We began our interview, I want
13 to say, around 2:50, 2:55, so. But I don't know the exact time
14 when he arrived.

15 Q So sometime between the time of the stop, I think we saw the
16 chase about 12:40 to when it stopped, somewhere around there?

17 A Correct.

18 Q And you started your interview, your first interview, at
19 2:55?

20 A Correct.

21 Q Okay. Was there another officer in there with you during
22 the interview?

23 A Yes. Captain Kenneth Driscoll.

24 Q And had Fortune been, like, formally charged at that point?

25 A No. We had no formal charges at that point.

1 Q But it's fair to say, or is it not fair to say, that if he
2 said, Adios, I'm done, he wasn't real free to go?

3 A Correct.

4 Q About how long was the initial interview?

5 A I believe the first one was about an hour.

6 Q Okay. And was it audio and video recorded?

7 A It was.

8 Q All right. During your time with Fortune did he appear to
9 be intoxicated or under the influence of drugs?

10 A He did not.

11 Q Did Fortune appear to have any physical or mental disability
12 that would have impaired his ability to understand what was being
13 said to him?

14 A He did not.

15 Q Prior to or during your interview with Fortune did you offer
16 him any breaks, bathroom or otherwise?

17 A He was offered -- you said prior to the interview?

18 Q Well, prior to or during the interview did you offer it to
19 him?

20 A During the second interview, or prior to beginning the
21 second interview, I offered him a drink.

22 Q If he had ever said/if he had ever asked, I need water; I
23 need to use the bathroom; I'd like something to eat, would you
24 have denied those, would you have denied it?

25 A No, absolutely not. We would have honored his request.

1 Q And at some point was he afforded the opportunity to use the
2 telephone?

3 A He was.

4 Q Was that after the first interview, during the first
5 interview?

6 A I believe that was after the first interview.

7 Q Prior to the second?

8 A Yes.

9 Q And did it get loud? Did you yell at him? Did you threaten
10 him?

11 A No.

12 Q Did you put your hands on him in any way?

13 A Absolutely not.

14 Q It's all video and audio recorded?

15 A Yes, sir.

16 Q All right.

17 ATTORNEY OSBORNE: May I approach?

18 THE COURT: You may.

19 (WHEREUPON, State's Exhibits 190 is marked for
20 identification.)

21 Q I'm going to show you 190 through 192. Can you take a look
22 at those and tell me if you recognize them.

23 A 190 is a CD bearing my initials, labeled State's 190. And
24 it's also labeled, Fortune interview, full.

25 191 is a CD that also has my initials and states, Fortune's

1 interview, clipped.

2 192 is a Summerville Police Department advisement of rights
3 form containing my signature and Mr. Fortune's.

4 Q Okay. And just for clarification purposes -- and I know
5 you've said this -- 190, that CD contains the entirety of your
6 interviewing Fortune?

7 A Correct.

8 Q And you know that because you initialed it?

9 A Correct.

10 Q And then 191 just contains clips from 190. Is that fair to
11 say?

12 A Correct.

13 Q All right.

14 ATTORNEY OSBORNE: Your Honor, at this time we would seek to
15 admit 191 and the Miranda, 192.

16 THE COURT: Any objection?

17 ATTORNEY HUBRICH: Just *Jackson v. Denno*, Judge.

18 ATTORNEY CORNWELL: No, Your Honor.

19 THE COURT: Very well. Admitted.

20 (WHEREUPON, State's Exhibits 191 and 192 are admitted into
21 the record.)

22 Q So I'm not going back and forth, let's just go to 190 now.
23 So we're looking at advisement of rights form; is that right?

24 A That's correct.

25 Q Whose handwriting is that filling out the form?

1 A That is mine.

2 Q Okay. And then I'm not going to ask you to read this
3 because I can't see it at all, but did you read this during the
4 interview?

5 A Yes, verbatim from that form.

6 Q Okay. And then all, right by each one of the Nos. 1 through
7 5, whose initials are those?

8 A Those are Mr. Fortune's.

9 Q And then under witnesses, whose signatures are those?

10 A The top one would be my signature. And the one below mine
11 would be Captain Driscoll's.

12 Q And then to the right by the X?

13 A By the X would be Muanah Fortune's signature.

14 Q And we're going to hear you read this during the interview
15 so I'm not going to ask you to read it now -- and we can't really
16 see it -- but by witnesses, are we repeating ourselves here? Is
17 this you and Driscoll?

18 A Correct.

19 Q And then to the right?

20 A Mr. Fortune.

21 Q All right. Before I play these clips I want to tell you,
22 detective, that when I ask you questions about what Fortune said
23 to you, I am only asking what Fortune said he did.

24 A Correct.

25 Q Okay.

1 ATTORNEY OSBORNE: Beg the Court's indulgence.

2 THE COURT: All right.

3 Q Start off with clip 1 from 191.

4 (WHEREUPON, State's Exhibit 191 is published to the jury.)

5 Q Who is that that just stepped in?

6 A That's Mr. Fortune.

7 Q All right. State's 195, what's contained in 195?

8 A The black hoodie that Mr. Fortune is wearing.

9 Q The same one you see him allegedly wearing right here?

10 A Correct.

11 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
12 move in 195 evidence.

13 THE COURT: All right. Yes, ma'am, any objection?

14 ATTORNEY HUBRICH: Judge, based on an established chain.

15 THE COURT: Overruled.

16 ATTORNEY CORNWELL: Same objection.

17 THE COURT: Very well. You may proceed.

18 (WHEREUPON, State's Exhibit 195 is admitted into the
19 record.)

20 (WHEREUPON, State's Exhibit 195 is published to the jury.)

21 Q All right. I know it's kind of hard to hear. What was that
22 about the cellphone?

23 A I asked him -- he provided me with a cellphone number. I
24 asked him if he had a cellphone with him. He said, no, that he
25 left it at house.

1 Q Didn't have his cellphone?

2 A Correct.

3 (WHEREUPON, State's Exhibit 191 is published to jury.)

4 Q What did he say brought him up here?

5 A He stated that he got dropped off up here to chill with his
6 friend, Jaquavious.

7 Q Had the name Jaquavious Washington come up at this point in
8 the investigation at all?

9 A No. It was the first time I heard it.

10 Q And did it come up later?

11 A It did.

12 Q In what way?

13 A As the investigation went on, we found that Mr. Porter had
14 sold marijuana to Mr. Washington on at least several occasions.
15 We also found in Mr. Porter's phone that the number belonging to
16 Mr. Washington was labeled at Little Brh, and it was also in
17 Mr. Porter's direct ledger.

18 Q Later on does Mr. Fortune refer to him as his cousin?

19 A He does.

20 Q Did you find any connections at all between J.B. Weaver and
21 any of the four defendants charged in this case?

22 A No.

23 Q How about David Swibaker?

24 A No.

25 (WHEREUPON, State's Exhibit 191 is published to jury.)

1 Q All right. Getting a ride to go back to Beaufort?

2 A Correct.

3 Q Now, we've only played like a small clip here. Right?

4 A Correct.

5 Q Is it fair to say that we basically covered the entirety of
6 his whole story?

7 A Correct.

8 Q Let's pause the interview for a second. Let's talk about
9 interrogation strategies, okay. How many suspects would you, as
10 a detective, estimate throughout your entire career that you have
11 interrogated, violent criminals?

12 A Into the hundreds.

13 Q When you're interrogating a person accused of committing a
14 violent crime do you employ different techniques to try to get
15 them to open up and speak to you?

16 A We do. We may use techniques such as minimizing; good
17 guy/bad guy; pitting, if there's multiple suspects, we try to pit
18 them against each other; may say things to the nature of, These
19 guys are monsters but you're the good guy.

20 Q Okay. Now I'm going to ask you to keep speaking up because,
21 trust me, I know how your voice fades. Believe me.

22 All right. So have you found it an effective technique to
23 go into an interview room when you're meeting someone for the
24 first time and say, Pal, I know you're a cold-blooded killer, now
25 tell me who you killed?

1 A No. If I did that, I think I'd be out of a job.

2 Q All right. But is it fair to say that when you spoke to
3 Mr. Fortune you did employ some of those techniques?

4 A I did.

5 Q Try to develop a rapport with them?

6 A I did.

7 Q Again, I'm going ask you again, did you ever, on any parts
8 of these clips that we're not playing, did you ever raise your
9 voice or scream at him?

10 A I did not.

11 Q I mean, it probably did get a little bit frustrating,
12 though. Is that fair to say?

13 A Yes.

14 Q Is it fair to say that y'all weren't buying this story he
15 just randomly got into?

16 ATTORNEY HUBRICH: Objection, Your Honor. Leading.

17 ATTORNEY OSBORNE: Okay, I'll rephrase.

18 THE COURT: All right.

19 Q Were you buying this story?

20 A No. It wasn't supported by any of the facts that we had.

21 Q Did you know at this time, or did you learn, that all four
22 of the defendants were from the Beaufort ---

23 ATTORNEY HUBRICH: Objection, Your Honor. Leading.

24 Q Did you or did you ---

25 ATTORNEY OSBORNE: I'll rephrase.

1 THE COURT: All right.

2 Q Did you or did you not learn at some time that all the
3 defendants in this case were from the Beaufort-Seabrook area?

4 A We didn't.

5 Q And what was his story again?

6 A That he came from the Beaufort-Seabrook area by himself --
7 or, excuse me, with his girlfriend to go to see his friend,
8 Jaquavious. At that point, he visited Jaquavious. He was told
9 that he could not spend the night, so he left, walked, ended up
10 at this Sunoco and miraculously found four other people from
11 Beaufort and got a ride home.

12 Q Or three other people?

13 A Correct.

14 Q All right. So let's talk about some of the things that you
15 said to him after you weren't buying that story. Did you say to
16 him, I'm going to be honest, I don't think you're being
17 100 percent truthful?

18 A I did.

19 Q I can't help you and he can't help you. Talking about
20 Captain Driscoll?

21 A Correct.

22 Q You got yourself into some stuff here.

23 A Correct.

24 Q We need to get to the bottom of this to make sure that you
25 walk out of here.

1 A Correct.

2 Q All right, but I can't do that when you're lying to me.

3 A Correct.

4 Q Was there a possibility that Fortune was going to walk out
5 of there?

6 A It would be a very minute possibility. But if he would have
7 provided a story that we could corroborate with facts that proved
8 he had no involvement, yes.

9 Q It's possible?

10 A Correct.

11 Q Was this early on in the investigation, or had the
12 investigation been going on for days?

13 A This is the first wee hours of it.

14 Q Okay. Later you said, or did you say, Come on, man, you
15 want to spend the rest of your life in prison? Did you say that?

16 A I did say that.

17 Q So that sort of sounds like a threat to me. Were you
18 threatening him?

19 A No. Based upon the facts that we knew at the time, these
20 charges were very significant and carry a lot of time.

21 Q Were you getting the feeling, or were you not getting the
22 feeling, that he appreciated his situation?

23 A No. As the story continued in the first interview, I
24 advised him he made some mistakes. His reply was the only
25 mistake that he made was getting a ride from the wrong people.

1 Q Okay. Did you say something like, This is the only power
2 you have right know; this is a big decision?

3 A I did.

4 Q If you waste it and we walk out that door, you won't get
5 another opportunity.

6 A I did.

7 Q What are you going to do?

8 A I did.

9 Q You want to toss that away?

10 A I did.

11 Q So opportunity is a word that you and Driscoll used a whole
12 lot. What does that mean, opportunity? What opportunity was
13 Fortune presented with at that time?

14 A That's his opportunity to provide the facts and his version
15 of the story so that we can also relay that information to your
16 office or subsequent, you know, here we are today, that would be
17 played for a jury.

18 Q And once y'all walked out, was that it?

19 A That was it.

20 Q You said, or did you not say, You're throwing your life away
21 at to 21 with no --

22 A I did.

23 Q Did you say that?

24 A I did.

25 Q With no criminal record.

1 A I did.

2 Q Do you find it an effective strategy to come in and tell
3 someone -- or maybe you do -- Hey, I know you're a career
4 criminal; this ain't your first rodeo?

5 ATTORNEY HUBRICH: Objection, Your Honor. Leading. At this
6 point the solicitor is testifying. I would ask for open-ended
7 questions.

8 THE COURT: Don't lead.

9 Q Do you find it an effective strategy to tell someone that
10 they're a career criminal?

11 A No. I wouldn't find that very effective at all.

12 Q All those efforts, all those techniques that you employed,
13 did it have any effect?

14 A Not at first, no.

15 Q All right. So at a certain point -- well, we'll play a
16 couple more clips from the first segment.

17 (WHEREUPON, State's Exhibit 191 is published to jury.)

18 Q That was clip 2 from 191, 2A. And now, you testified
19 earlier that the interview began at about 2:55, I think you said?

20 A Correct.

21 Q And what time is it now?

22 A 3:54:33.

23 Q And how long was the first interview again?

24 A About an hour.

25 Q Okay. Fair to say this is about the end of it then?

1 A Correct.

2 Q Okay.

3 (WHEREUPON, State's Exhibit 191 is published to jury.)

4 ATTORNEY CORNWELL: I'm going to object to this. *Bruton*.

5 (WHEREUPON, an off-the-record discussion is held at
6 sidebar.)

7 THE COURT: Overruled. You may proceed.

8 ATTORNEY CORNWELL: Your Honor, for purposes of the record,
9 we would have a continuing objection to all of these under
10 *Bruton*. Just to preserve the record, Your Honor.

11 THE COURT: That, I have no problem with. But if it's
12 different, let me know.

13 ATTORNEY CORNWELL: I'll bring it to your attention.

14 THE COURT: Right.

15 ATTORNEY OSBORNE: I had to restart a clip, Judge. I don't
16 know what happened. I'll let it play a few seconds here. All
17 right. We're playing clip 3A from 191.

18 (WHEREUPON, State's Exhibit 191 is published to jury.)

19 Q All right. Did that end your involvement with speaking to
20 him?

21 A Yes, sir.

22 Q Did you have the occasion to speak to him again later on in
23 the night?

24 A We did.

25 Q And how did that come about?

1 A He was served with his paperwork, his booking paperwork,
2 which was his charges. He was in the booking area. I looked at
3 him, he looked at me, and we locked eyes. And I approached him
4 and I said, Are you sure you don't want to talk? He put his head
5 down and he said, If I talk, they're going to kill me.

6 And at that point, I invited him back for a second
7 interview.

8 Q And how long was the second interview?

9 A Approximately 40 - 45 minutes.

10 Q What time did the second part of his statement begin?

11 A Seven-something. I'd have to refer to my notes to give you
12 the exact time.

13 Q Okay, so seven-something. And we have the time that that
14 was, so was it about a three-and-a-half-hour difference?

15 A Correct.

16 Q Or three-and-a-half-hour break. And I did ask you this, how
17 long was the second interview?

18 A You did, but 40 to 45 minutes.

19 Q And when you began the second part of the interview with
20 Fortune, what was your expectation going in there?

21 A I thought we were about to get the truth. I thought he was
22 going to come right in and tell us everything that happened.

23 Q Is that what happened?

24 A No.

25 Q All right. The time here?

1 A 7:17 a.m.

2 (WHEREUPON, State's Exhibit 191 is published to the jury.)

3 Q Was a little hard to hear. What did he say in reference to
4 the gun?

5 A He stated he didn't have one.

6 Q That he did not have a gun?

7 A Correct.

8 (WHEREUPON, State's Exhibit 191 is published to the jury.)

9 Q All right. Playing clip 2D from 191.

10 (WHEREUPON, State's Exhibit 191 is published to the jury.)

11 Q All right. The other voice we're hearing here, is that
12 Captain Driscoll?

13 A Yes, sir.

14 Q And what was his question regarding the type of guns?

15 A He identified them by caliber. He asked if he, Mr. Fortune,
16 was in possession of the 9-millimeter or the .38 revolver or the
17 .380.

18 Q Okay.

19 (WHEREUPON, State's Exhibit 191 is published to the jury.)

20 Q What did you just say?

21 A I told him that's why he remembered his shoes.

22 (WHEREUPON, State's Exhibit 191 is published to the jury.)

23 Q What kind of gun did he say he had?

24 A Mr. Fortune stated he was in possession of the Taurus 9
25 millimeter.

1 Q And what color was it?

2 A Silver and black.

3 Q Was there a silver and black Taurus 9 millimeter recovered
4 in this case?

5 A There was.

6 Q Did you or Captain Driscoll ever volunteer to him that y'all
7 had located a Taurus 9 millimeter?

8 A No, we never mentioned make and models. They weren't known
9 to us at the time, just caliber.

10 Q You said they weren't even known to you at the time?

11 A No.

12 Q Did he say that he fired the gun?

13 A He stated that weapon had never been fired.

14 Q Was there evidence that actually seemed to maybe corroborate
15 that, evidence that the gun hadn't been fired?

16 A There was. The Taurus 9 millimeter had almost the maximum
17 capacity of ammunition, which would be consistent with not being
18 fired in this incident.

19 Q Right. I guess you could top it off, but the bullets that
20 were in there were consistent with the magazine capacity?

21 A Correct.

22 Q And there was no conclusive evidence that that gun had been
23 fired. We've already heard SLED firearms examiner testify. Is
24 it fair to say there was no evidence saying that that was fired,
25 or conclusive?

1 A Correct.

2 Q Where did he say he found that gun from?

3 A He stated when he got in the car with the three other
4 individuals, it was there on the seat.

5 Q Throughout the investigation did you find any evidence that
6 contradicted that?

7 A I did.

8 Q And what was that?

9 ATTORNEY HUBRICH: Objection, Your Honor. It's going to be
10 hearsay testimony. His testimony's going to be based on hearsay
11 evidence that's certainly not been admitted at this point.

12 ATTORNEY OSBORNE: I'll withdraw the question.

13 THE COURT: Okay.

14 Q All right. So now we're going to clip 3B.

15 (WHEREUPON, State's Exhibit 191 is published to the jury.)

16 Q That was really hard to hear. What did he say he was
17 looking for?

18 A Stuff, anything that he could find.

19 Q Playing clip 4B from 191.

20 (WHEREUPON, State's Exhibit 191 is published to the jury.)

21 Q What is the time now?

22 A 7:41 a.m.

23 Q Twelve?

24 A Correct.

25 Q Just a little hiccup there. I'm playing you now 5 from 191.

1 (WHEREUPON, State's Exhibit 191 is published to the jury.)

2 Q What did he say?

3 A He states that it was kicked in, but he does not know who
4 kicked it in. In reference to the back door.

5 (WHEREUPON, State's Exhibit 191 is published to the jury.)

6 Q Sorry to ask you. What did he say there?

7 A He's talking about -- we first talked about the order of how
8 they came in, and he states that he was last, and then he went
9 straight to the back room while everybody else was giving
10 instructions for people to get down.

11 (WHEREUPON, State's Exhibit 191 is published to the jury.)

12 Q All right. Last clip, clip 6.

13 (WHEREUPON, State's Exhibit 191 is published to the jury.)

14 Q How long did he say it took him to get back to the car?

15 A I don't believe he stated how long it took him to get back,
16 but he stated from the car to the house it was a few minutes'
17 walk.

18 Q All right. Let's change gears and let's move into -- did
19 you have the occasion later on to collect a buccal swab from ---

20 THE COURT: All right. That is a wonderful stopping place.

21 ATTORNEY OSBORNE: Yes, ma'am.

22 THE COURT: All right. All right. Ladies and gentlemen, we
23 are going to stop here for this evening. I'm going to remind you
24 again, please do not discuss this matter or allow anyone to
25 discuss it with you. And we will begin in the morning at 9:30.

1 Please be mindful with regards to cellphones. Please leave
2 your cellphone or other communication device away from the
3 courthouse. And I'll see you in the morning at 9:30. At 9:30.
4 Thank you so much.

5 (WHEREUPON, the jury is dismissed for the day at 5:00 p.m.)

6 MATTERS OF LAW

7 THE COURT: Now, Ms. Hubrich ---

8 ATTORNEY HUBRICH: Yes, ma'am.

9 THE COURT: --- I know that y'all had some conversations
10 about completeness. Have you shared the parts that you want
11 added? Didn't y'all have some conversations about that? Yes.
12 No? Maybe?

13 ATTORNEY OSBORNE: We did, Judge. And I don't think it's
14 appropriate for me to ask you to instruct her to move it into
15 evidence. I think she can just roll with it. I don't think she
16 needs to authenticate it. And if she does what she did during
17 *Denno*, I don't think *Bruton's* implicated, I didn't hear any
18 *Bruton* issues at all. So I think if that was a preview, I think
19 it's good.

20 ATTORNEY HUBRICH: I think *Bruton's* implicated on a couple
21 of them, but they're the same ones that I did at pretrial. So I
22 don't think I've added any.

23 THE COURT: Okay, got it. Good. That's helpful for me.
24 And I appreciate that. All right. And anything from the state
25 before we leave?

1 ATTORNEY OSBORNE: No, ma'am.

2 THE COURT: Anything?

3 ATTORNEY HUBRICH: Yes, ma'am, just quickly. It came out
4 with the DNA expert -- I'm sorry, my brain is fried, just give me
5 two seconds to get it together.

6 DNA expert had case notes that were not provided in
7 discovery to the defense. We had to review them on the fly while
8 she was sitting on the witness stand.

9 I do not believe this is a discovery violation because I
10 heard some scuttlebutt while we were standing here that the state
11 didn't have them, either. Just wanted to put that on the record
12 and have them confirm that they didn't have those notes, either.

13 ATTORNEY OSBORNE: No, we don't, Your Honor. And the last
14 page of the SLED report contemplates bench notes, and it just
15 says, This reports contains the conclusions, opinions and
16 interpretations of the analyst whose signature appears below,
17 this being Ryan DeWane. Technical reports supporting the
18 conclusions in this report are available upon request. Afford
19 sufficient time for production.

20 Bench notes are those type of reports. We don't typically
21 request those reports unless the defense requests them, then we
22 request the bench notes, because it's exhaustive, and it's
23 difficult for us to predict what type of things they would like
24 to go with.

25 A lot of times they'll ask for things like policies and

1 procedures. You don't know that, that's not typically included
2 in bench notes. So if they would like something like that, all
3 we have to do is ask. But generally the turnaround is usually
4 about 30 to 45 days. We did not have that.

5 THE COURT: You didn't have it.

6 ATTORNEY CORNWELL: That's all I needed, Judge. For PCR
7 purposes, that's all I needed. And it was gunshot residue, I
8 think, not DNA.

9 ATTORNEY OSBORNE: Okay. Same thing.

10 ATTORNEY CORNWELL: Same thing.

11 THE COURT: Got it --

12 ATTORNEY CORNWELL: Thank you, Judge.

13 THE COURT: In an abundance of precaution, talk about the
14 Yankees or the Braves. You can plan for football in the fall.
15 But you cannot discuss your testimony, because you're on the
16 stand. You know that. Thank you. So please be mindful of that.

17 Yes, ma'am?

18 ATTORNEY CORNWELL: Your Honor, just for purposes of the
19 record, again, as far as the clips go, I wanted to put on record
20 my objection to *Bruton*. Obviously in one of the clips it says,
21 Were you there when your buddy shot somebody? Later on we talk
22 about whenever he said, They are going to kill me if I talk.
23 Obviously he's saying that while my client is not only sitting in
24 the room with him but while they've got him sitting in the
25 booking room with my client and other people.

1 It gives, I think, an unfair prejudicial effect on my client
2 because my client is not allowed to cross-examine Mr. Fortune
3 regarding who he is talking about when he says, They'll kill me,
4 things of that nature. I think that it does bring in the *Bruton*
5 issues that we discussed pretrial.

6 And I just want to put on record that that is our continuing
7 *Bruton* objections, based on the pretrial, based on -- and I did
8 wait until the clip actually came up that actually said, Your
9 buddy ---

10 THE COURT: Right.

11 ATTORNEY CORNWELL: Any of those clips that had those
12 pronouns in there, is where our objection on *Bruton* would come
13 in. And that's a continuing objection.

14 THE COURT: Okay. And you had said that the jury has been
15 told that there is more than one other person, four people, it's
16 repeatedly been said, and there's no way that, Your buddy,
17 implicates anyone?

18 ATTORNEY OSBORNE: That's correct, Your Honor. In fact,
19 I've got a feeling we're going to hear the name Jaquavious
20 Washington quite a bit in closings by the defense.

21 THE COURT: Okay. Great.

22 ATTORNEY CORNWELL: Thank you, Your Honor.

23 THE COURT: Very well. I'll see y'all in the morning. Yes.
24 Thank you.

25 (WHEREUPON, court recessed for the day at 5:05 p.m. and

1 reconvened at 9:40 a.m. on Tuesday, May 18, 2021.)

2 MATTERS OF LAW

3 THE COURT: Anything before we bring the jury out for the
4 state?

5 ATTORNEY OSBORNE: Judge, I'm not sure when you want to
6 address the whole Elijah Green issue, with Ms. Cornwell eliciting
7 questions from this detective regarding his interview with Elijah
8 Green. I'm almost finished, I've only got a couple more quick
9 questions.

10 If you want to address that now while we're here in this
11 position, I mean, my position on that would be this. I haven't
12 read *U.S. v. Holmes* Supreme Court case, those are long, all
13 right. But Ms. Glover read it for me, and she has represented to
14 me that the difference between the facts in *Holmes* and what we
15 have here is that in *Holmes* there was a prosecutor who was
16 prosecuting a case in which it was clear from the evidence that
17 only one person committed the crime. There was a statement from
18 another individual who said, I did it. That would have
19 exonerated the defendant who was on trial.

20 The trial judge kept it out, for whatever reason, and the
21 Supreme Court said even if there was a rule, if we were to look
22 at it and keep it out for that reason, that should not be kept
23 out because of due process and fairness and things like that.

24 And we don't have that in this case. What we have in this
25 case is an individual who is making a self-serving statement

1 who's saying, I didn't do it; I didn't have anything to do with
2 it. In fact, I mean, what he does say is -- this is kind of
3 where it gets a little bit in the weeds. They took his GSR from
4 his hands that night. They did so using this BLUESTAR technique.
5 We're going to have to some conversations with Summerville. I'm
6 not familiar with that. I did some research into it. It
7 provides a presumptive positive test. I don't think I can argue
8 to you to bring into the courtroom a presumptive. So we're going
9 to talk about that later with Summerville. I prefer, in the
10 future, for violent crimes, let's get that to SLED.

11 Having said that, they did use that as an interrogation
12 technique and they asked him, they said, Well, that came back
13 positive, because they get results like that with that test, so,
14 what's your explanation for that? And he said that, Well,
15 earlier in the night I was at a house with some white fellows and
16 they were shooting a gun.

17 Well, you can mislead a jury and present that evidence
18 through cross to make it sounds like, well, he was involved in a
19 murder with some white guys. That's not what he said. He didn't
20 say I was shooting white guys; he said, I was there when white
21 guys were shooting guns, that's why you're getting the test
22 positive.

23 So I would ask that any cross-examination, whether the
24 phrase, through the course of your investigation, is used or not,
25 any cross-examination from Detective Davis regarding what Elijah

1 Green said, be excluded.

2 If, however, the ruling is that it's allowed, I would ask
3 her to just go ahead and publish the statement, just move it all
4 in. I've listened to it. I don't hear any Bruton issues. And,
5 you know, to me that would be the most fair way to do it if she
6 wants to do that. But I doubt she wants to go there.

7 THE COURT: Okay, great. Thanks. Yes.

8 ATTORNEY CORNWELL: Your Honor, with candor to the Court and
9 to the state, I don't believe Detective Davis actually
10 interviewed Green; I think he interviewed Major and Fortune. And
11 I think Detective Moy is the one who interviewed Salazar and
12 Green. So I had no intention of trying to bring in Green's
13 statement because Detective Davis was not there when he gave it.
14 So I was not going to elicit any testimony regarding Green
15 through Detective Davis.

16 I was hoping to get it in through Detective Moy, but I think
17 that got shot down. And, as an officer of the court, I don't see
18 a way for me try to back-door it in through Detective Davis when
19 he was not present when the statement was given.

20 ATTORNEY OSBORNE: Well, I just wasted my brilliant
21 argument.

22 THE COURT: You can save it. Consider it practice for
23 sometime in the future. Change the names, the facts -- okay.
24 All right.

25 ATTORNEY CORNWELL: Your Honor, I am obviously going to get

1 into Jaquavious Washington with Detective Davis. However, I am
2 not going to, I don't intend on trying to, elicit direct
3 statements, you know, for hearsay purposes.

4 However, I do intend on questioning him about his interview
5 with Washington. And that is going to be for purposes of
6 impeaching the investigation and not for getting to the truth of
7 the matter -- for the truth of the statement. It's just going to
8 be, You met with him; through your investigation this is what
9 you've done, and impeaching the investigation of, So you believed
10 this but despite that you didn't do X, Y and Z.

11 THE COURT: Okay, got it. All right. Very well. Anything
12 on behalf Mr. Fortune this morning before we start?

13 ATTORNEY HUBRICH: No, ma'am.

14 THE COURT: Great, great. Everybody good? Let's have the
15 jury.

16 (WHEREUPON, the jury is seated in the courtroom at
17 9:47 a.m.)

18 THE COURT: Good morning, ladies and gentlemen. And at this
19 time we will continue with the state's case and the direct
20 examination of Detective Davis.

21 ATTORNEY OSBORNE: That's correct, Your Honor.

22 THE COURT: You may proceed as soon as he is seated and
23 situated.

1 JONATHAN DAVIS,
2 having previously been duly sworn, retakes the witness
3 stand, was examined and testified as follows:

4 DIRECT EXAMINATION (cont.)

5 BY ATTORNEY OSBORNE:

6 Q All right, detective. We left off with the buccal swabs.
7 But before we get to that, there was some discussion about
8 former, I think it's safe to say, disgraced officer, former
9 officer, Wade Rollings.

10 A Correct.

11 Q And I'm going to have to ask you to speak up.

12 A Correct.

13 Q And so there was some testimony that he was fired for
14 tampering with evidence. Do you know what the allegation was?

15 A I believe tampering is incorrect. He was accused of theft.

16 Q Theft?

17 A Correct.

18 Q Stealing?

19 A Correct.

20 Q Was he charged for that?

21 A He was charged public misconduct in office.

22 Q A thief?

23 A Correct.

24 Q And then I want to just ask one question that kind of dawned
25 on me while we were listening to your testimony. When Fortune

1 told you that -- what did Fortune tell you again when y'all
2 locked eyes in the booking area?

3 A We looked at each other. I asked him if he would like to
4 talk. He put his head down and he said, If I talk, they'll kill
5 me, they'll kill me.

6 Q Through your experience in law enforcement, have you ever
7 heard the term snitches get stitches?

8 A Yes, sir.

9 ATTORNEY HUBRICH: Objection, Your Honor.

10 THE COURT: Sustained.

11 ATTORNEY HUBRICH: Thank you. Move to strike.

12 THE COURT: Ladies and gentlemen, please disregard the
13 former comment. I have sustained an objection. Just debow it
14 from your mind.

15 ATTORNEY OSBORNE: May I approach the witness?

16 THE COURT: You may.

17 Q I'm showing you what's been marked as State's Exhibit No.
18 206. Can you take a look at that and tell me if you recognize
19 that.

20 A These are two buccal swabs that I collected from Mr. Porter.

21 Q Do you remember the date that you collected those?

22 A I'd have to refer to my notes for it.

23 Q That's okay. But you were actually the one that collected
24 the buccal swab from him?

25 A I was.

1 Q Okay. And then you properly packaged and sealed it? Or,
2 did you?

3 A I did.

4 Q Okay.

5 ATTORNEY OSBORNE: Your Honor, if it's not already, we'd
6 seek to move 206 into evidence.

7 THE COURT: I don't know if it's entered or not.

8 ATTORNEY HUBRICH: We have no objection. We don't believe
9 it is.

10 THE COURT: Okay. On behalf Ms. Salazar?

11 ATTORNEY CORNWELL: No objection, Your Honor.

12 THE COURT: If it's not admitted, it is now.

13 ATTORNEY OSBORNE: Thank you, Judge.

14 Q We have heard some previous discussion about Jaquavious
15 Washington and whether a buccal swab was obtained from him. Did
16 y'all ever get a buccal swab from Jaquavious?

17 A We did not.

18 Q And why not?

19 A Our working theory is that Jaquavious pointed out the house
20 to the defendants. We were never able to develop enough probable
21 cause to obtain a search warrant. We just can't write a search
22 warrant out and get one, there has to be probable cause in order
23 to connect the dots.

24 Q And is it or is it not fair to say that much of the DNA that
25 you all were comparing to were items that were either in the

1 Honda or discarded from the Honda?

2 A Correct.

3 Q And did you have any evidence to suggest that Jaquavious
4 Washington was in the Honda that night?

5 A No, sir.

6 Q And that's what you're talking about about probable cause?

7 A Correct.

8 Q We saw on the video -- well, I guess the alleged facts on
9 the video, are that Polo Salazar was driving that car that fled
10 from the police for almost over 30 minutes?

11 A Correct.

12 ATTORNEY HUBRICH: Objection, Your Honor. Leading.
13 Testifying.

14 THE COURT: Yes. Don't lead.

15 Q Are the alleged facts that Polo Salazar was the individual
16 who was driving the car that fled from the police for over 30
17 minutes?

18 A Yes, sir.

19 Q Why didn't y'all -- or, could you have charged him with
20 additional charges?

21 A We didn't charge Mr. ---

22 ATTORNEY CORNWELL: Objection, Your Honor.

23 THE COURT: Would you like to be heard? I don't know the
24 relevance. So, if you need to approach.

25 ATTORNEY OSBORNE: Well, I think it's a question that

1 everyone's asking, If he's driving the car, why weren't there
2 other charges thrown him? And this is the case agent. He's the
3 one that made that decision. So I'm asking him why.

4 ATTORNEY CORNWELL: Your Honor, I would object under 401 and
5 403.

6 THE COURT: Sustained.

7 ATTORNEY OSBORNE: I'll withdraw it. Okay, thank you,
8 Judge.

9 Q All right. Lastly, we've heard the name Jaquavious
10 Washington come up during this trial.

11 A Yes, sir.

12 Q And we heard from the interview with Mr. Fortune that he
13 had -- how did he identify Jaquavious? To him, what was their
14 relationship?

15 A His friend. And I think he later refers to him as his
16 cousin.

17 Q At any point did Mr. Fortune say that Jaquavious was with
18 him when he was in the Honda coming from Beaufort?

19 A He did not.

20 Q At any point did Fortune say that Jaquavious was with him
21 when he went to Marcus's home?

22 A He did not.

23 Q At any point did Fortune say that Jaquavious was with him
24 when he broke into Marcus's home?

25 A He did not.

1 ATTORNEY OSBORNE: No further questions.

2 THE COURT: All right. Cross-examination?

3 ATTORNEY HUBRICH: Thank you, Judge. May it please the
4 Court.

5 THE COURT: Yes.

6 CROSS-EXAMINATION

7 BY ATTORNEY HUBRICH:

8 Q I want to talk to you a little bit about your testimony
9 yesterday afternoon and also this morning while it's fresh in our
10 mind. Yesterday you were asked about the 911 call.

11 A That's correct.

12 Q And you testified that it came in around 12:03.

13 A 12:03 and some seconds, yes.

14 Q And you went on to say that you suspected -- you were
15 drawing this timeline. You went on to say that you suspected
16 the suspects left the back door at 12:02.

17 A Somewhere in that area, about 30 to 45 seconds prior.

18 Q Based on the 911 call?

19 A And Mr. Porter's statements.

20 Q Well, that's right. So it's based on the 911 call which
21 requires you to believe Marcus Porter.

22 A And the 911 caller.

23 Q Well, it requires you to believe that he called immediately.
24 Right?

25 A The 911 caller called immediately. Her statement was, in

1 the 911 call, Mr. Porter just came to my house.

2 Q It requires you to believe that he left the house

3 immediately and went across the street?

4 A According to Mr. Swibaker, that's accurate.

5 Q It requires you to believe the both of them?

6 A And the neighbor. All three.

7 Q Well, I mean, you keep saying that, but let's talk about

8 this. Honestly, the neighbor didn't hear gunshots; right?

9 A Correct.

10 Q The neighbor wasn't a witness to this crime; right?

11 A Correct.

12 Q So the only witnesses we have are Marcus Porter and David

13 Swibaker?

14 A Correct.

15 Q So in order to believe the timeline you have to believe that

16 they are telling the truth?

17 A Correct.

18 Q Okay. So isn't it true they hid information from you during

19 your investigation?

20 A I don't believe they hid information. When I asked, they

21 were truthful.

22 Q Did they tell you they were burglarized 10 days prior?

23 A Only when asked.

24 Q Only when you confronted them with it; right? You found out

25 about it and you confronted them with it. Right?

- 1 A Correct, only when asked.
- 2 Q And you've been in this courtroom the whole time?
- 3 A Yes, ma'am.
- 4 Q You're the lead investigating officer in this case?
- 5 A Correct.
- 6 Q And you've been sitting here the whole time right by the
- 7 witness stand listening to what they're saying?
- 8 A Correct.
- 9 Q And you heard Marcus Porter testify the other day that the
- 10 perpetrators of this crime took Joe Weaver's wallet.
- 11 A Correct.
- 12 Q He never mentioned that wallet to you in your investigation;
- 13 did he?
- 14 A I do not believe so.
- 15 Q I'm sorry. Can you repeat that?
- 16 A I do not believe so.
- 17 Q So you know that that wallet's important?
- 18 A Correct.
- 19 Q Well, now he knows that, too; doesn't he? Is it unusual to
- 20 you that he brought it up on the witness stand this week and
- 21 didn't mention it a single time to you during the investigation?
- 22 A I can't speak for Mr. Porter.
- 23 Q Well, David Swibaker testified last week that he was hit in
- 24 the back of the head by one of these perpetrators and they told
- 25 him -- and I'm going to paraphrase because I don't want to curse

1 in court -- I'm going to blow your brains out. Right?

2 A Correct.

3 Q He testified to that from that witness stand.

4 A Correct.

5 Q Had he ever told you that prior to him coming to testify?

6 A Not that I recall.

7 Q If someone, if a victim of a crime, says to you, They hit me
8 in the back of the head, wouldn't you be like, Hey, are you okay;
9 do you need EMS; is there a concussion?

10 A I think that's a fair assessment.

11 Q Wouldn't you have charged one of these guys with assault?

12 A Probably not.

13 Q At any rate, you didn't because he never told you that;
14 right?

15 A Correct.

16 Q He made it up on the witness stand last week. Marcus Porter
17 claimed to be a small-time drug dealer. You heard that, right,
18 he told you that throughout the whole course of your
19 investigation? I think he even got on the witness stand and said
20 that. Right?

21 A Correct.

22 Q So I think the evidence that was collected at his house
23 speaks to that. But I want to talk about the gloves. Marcus
24 Porter was repeatedly asked throughout the investigation about
25 gloves. Correct?

1 A Correct.

2 Q And he said, I never saw any gloves; I don't remember any
3 gloves. You heard him say that; right?

4 A Correct.

5 Q And now, on the witness stand last week, he magically
6 remembers gloves.

7 A Correct.

8 Q You know that this is important.

9 A Correct.

10 Q And now he does, too; right?

11 A Correct.

12 Q I want to talk about what you said yesterday about
13 Jaquavious Washington and again what you said today about
14 Jaquavious Washington.

15 You were asked about Jaquavious Washington by the solicitor,
16 and you said you discovered that Porter sold drugs to him, Marcus
17 Porter sold drugs to him.

18 A Correct.

19 Q And that Porter had him in his contact list as Little Brh.

20 A Correct.

21 Q And you were asked then by the solicitor if Jaquavious had
22 any connection with Joe Weaver, ---

23 A Correct.

24 Q --- the deceased gentleman, and you said, No, no connection
25 there.

1 A (Nods.)

2 Q You were then asked by the solicitor if Jaquavious had any
3 connection to David Swibaker; right? He asked that you
4 yesterday?

5 A Not to my knowledge. I believe he asked me if there was a
6 connection to Mr. Porter.

7 Q He asked about Porter; he asked about Weaver; and then he
8 asked about Swibaker, and you said no connection there, either?

9 A Not that I remember that. But there is a connection to
10 Mr. Swibaker.

11 Q Right, if you had testified to that. If I'm wrong, maybe
12 I'm wrong. I was listening pretty intently. But if you had said
13 yesterday no connection between Jaquavious Washington and David
14 Swibaker, that would be incorrect?

15 A Yes.

16 Q Because David Swibaker actually introduced Jaquavious
17 Washington to Marcus Porter.

18 A That is correct.

19 Q David Swibaker introduced Jaquavious Washington to Marcus
20 Porter so that Marcus Porter could sell drugs to him?

21 A That is correct.

22 Q You ended up interviewing Jaquavious Washington twice?

23 A Yes, ma'am.

24 Q The first time you went and you got a statement from him
25 about, What in the heck happened here; how are you involved?

1 A Correct.

2 Q He gives you a statement. And then you go get his cellphone
3 records?

4 A Correct.

5 Q And based on those cellphone records, you interview him
6 again?

7 A Yes, there was questions.

8 Q And you say to him, We believe you were a participant in
9 this crime.

10 A Correct. As I stated before, our theory is that he pointed
11 out the house to the defendants.

12 Q Well, that's not just it; is it?

13 A That is our theory.

14 Q The state just asked you, Do you have any evidence to
15 suggest whether Jaquavious Washington was in the Honda that
16 night? And you hesitated, but then you said no.

17 A There is none.

18 Q So I'm going to ask you the second question. Do you have
19 any evidence to suggest that Jaquavious Washington was at [REDACTED]
20 Myrtle Place at the time that this crime was going down?

21 A At that address?

22 Q Near the address.

23 A His cellphone records show that he's in the vicinity. I
24 can't pinpoint an exact location, and I do not know what the
25 range would be off those maps.

1 Q Well, you're an investigator; right?

2 A Correct.

3 Q You investigate thoroughly?

4 A Correct.

5 Q This raised red flags to you?

6 A Correct.

7 Q Because he told you he was somewhere else completely
8 different the first time you interviewed him.

9 A Correct. And then he ---

10 Q He lied to you the first time.

11 A --- provided an explanation.

12 ATTORNEY OSBORNE: Objection, Your Honor. Would she please
13 allow the witness an opportunity to answer the question.

14 ATTORNEY HUBRICH: Absolutely, Judge. I apologize.

15 THE COURT: Yes.

16 A He was able to provide a different explanation as to where
17 he was.

18 Q Well, that's just a fancy way of saying he lied the first
19 time. You confronted him with his cellphone records, You're at
20 the scene; We think you were involved. And then he comes up with
21 another story.

22 A Again, I can't pinpoint him at the scene. But, depending on
23 how those maps came out with the range, I don't know if that
24 range is one mile or if that range is five miles.

25 Q So you have this gentleman that we know knows these two

1 witnesses; right?

2 A Correct.

3 Q Jaquavious Washington. They have his contact in his
4 cellphone?

5 A Correct.

6 Q We know that he's buying drugs from them and has in the
7 past?

8 A Correct.

9 Q We know that he's contacted them very recently about buying
10 more drugs, substantial weight, soon. Right?

11 A I wouldn't call \$100 a substantial weight, but ...

12 Q It's \$100 worth of marijuana.

13 A Correct.

14 Q Right? So we know all of those things. And you're
15 investigating the case. And then you interview him and he gives
16 you a statement that he's in a different part of town when this
17 happens. Right?

18 A Correct, which we were able to corroborate.

19 Q And then you go get his cellphone tower records; right?

20 A Correct.

21 Q And you find, Oh, no, he's actually right near Myrtle Place
22 when this happened.

23 A Again, depending on the mapping. I don't know when the
24 analyst mapped if it was one mile, five miles. That range can
25 vary. You can move that, so it's all going to be dependent.

1 Q But he certainly wasn't where he told you the first time;
2 right?

3 A And he provided an explanation for that.

4 Q So he lied the first time; he explains the second time. And
5 your testimony, when you were asked by the solicitor, Did you
6 have probable cause to get Jaquavious Washington's DNA?, you
7 answered, No.

8 A Correct. I don't believe we did have probable cause.

9 Q I want to talk a little bit about the interrogation,
10 Muanah's interrogation, the first one. Because there were two;
11 right?

12 A Correct.

13 Q The first one, the solicitor played a clip from that
14 interrogation. And it was like a minute, that clip.

15 A I believe he played several clips from both.

16 Q Well, from the first one, he played a little clip. And then
17 he says to you, Is it -- and I'm going to quote -- Is it fair to
18 say that this covers the entirety of Muanah's story?

19 A Correct.

20 Q And you say, Yep, it does.

21 A Correct.

22 Q But y'all interrogated him that first time for an hour.

23 A About an hour.

24 Q It wasn't just a small, little, one-minute clip; right?

25 A Correct.

1 Q And he told the same version of events for that whole hour.

2 A Correct.

3 Q So it wasn't just a one-minute clip where he tells you this
4 version of the events and that's the entirety of the story, and
5 then goes back out again. It was an hour.

6 A Telling the same story.

7 Q And you used your tactics during that whole, the tactics you
8 testified to, during that whole hour?

9 A Correct.

10 Q And still he holds fast to the version for that whole hour;
11 right?

12 A That's common.

13 Q Is that a yes, he held fast to his version that whole hour?

14 A Yes.

15 Q So the solicitor then asked you about your comment to Muanah
16 during the interrogation, the comment about him spending his life
17 in prison.

18 A Correct.

19 Q He was going to spend his life in prison if he didn't tell
20 you what you wanted to hear, something along those lines. Right?

21 A I think that's a little off. I didn't tell him he was going
22 to. I said he's facing serious charges and, if you add them all
23 up, he potentially could face his life in prison.

24 Q You answered the question to the solicitor by saying, Yeah,
25 I know these charges carry a lot of time. Right?

1 A Correct.

2 Q How much time does murder carry?

3 ATTORNEY OSBORNE: Objection, Your Honor. That's not
4 relevant.

5 ATTORNEY HUBRICH: Judge, I think the solicitor opened the
6 door on his direct when he was asking him about life in prison
7 and these charges carry a lot of time. It leaves an open
8 question, Well, how much time?

9 THE COURT: Sustained.

10 ATTORNEY HUBRICH: Thank you, Judge.

11 Q I want to talk about the entire investigation. And we're
12 going to get back to the interrogation in a minute.

13 A Okay.

14 Q Your investigation, at the end of it all, at the end of the
15 day we're all here, your investigation leads you to conclude just
16 based on all the evidence that you've looked at that Muanah
17 Fortune did not fire a weapon that night?

18 A Correct.

19 Q That he didn't shoot a dog that night?

20 A Correct.

21 Q That he didn't shoot Joe Weaver or Marcus Porter that night?

22 A Correct.

23 Q He didn't drive a getaway car?

24 A Correct.

25 Q The DNA that was collected, none of that puts Muanah Fortune

1 in the house. Right?

2 A I believe that his DNA came back on the glove.

3 ATTORNEY OSBORNE: Objection, Your Honor. May we approach?

4 THE COURT: Yes.

5 (WHEREUPON, an off-the-record discussion is held at
6 sidebar.)

7 THE COURT: Sustained. Ladies and gentlemen, please
8 disregard the last, not the question but the, answer. And just
9 delete to that, please.

10 Q So the DNA that was found in this case, none of the DNA that
11 was found puts Muanah Fortune at [REDACTED] Myrtle Place inside the
12 house? None of his DNA was found in the house; right?

13 A Correct. No DNA was recovered from the home besides the
14 projectiles from Mr. Weaver.

15 Q It was collected, there was DNA collected from the house;
16 right? The dog's mouth, the projectile, there was some blood.
17 Right?

18 A Correct.

19 Q None of that in the house was Muanah Fortune's?

20 A Correct.

21 Q Fingerprints were collected in this case?

22 A I believe so.

23 Q None of those fingerprints belonged to Muanah Fortune?

24 A Not to my knowledge.

25 Q There were shoe prints kind of looked at on the door?

- 1 A Correct.
- 2 Q Not Muanah Fortune's shoe print on the door of that house?
- 3 A None that matched the shoes that he was wearing that night.
- 4 Q Two witnesses got on the witness stand. Neither one of them
- 5 could identify this gentleman as being in the house?
- 6 A Correct.
- 7 Q Muanah Fortune, neither one of them could identify Muanah
- 8 Fortune as being in that house; correct?
- 9 A Correct.
- 10 Q So we have that. And we're going to start from that, and
- 11 then we're going to move into the confession. So I want to talk
- 12 a little bit about this confession. You would agree with me that
- 13 confessions can be -- now, I'm not saying in this case, but they
- 14 can be -- coerced?
- 15 A There's previous history of that with other people. Yes.
- 16 Q So would you agree with me that confessions can sometimes,
- 17 if they're coerced -- next question is -- be false?
- 18 A There's a possibility.
- 19 Q You went to the law enforcement academy, I think you
- 20 testified, criminal justice academy, here in South Carolina.
- 21 A Correct.
- 22 Q And you testified that they taught you ways to get a
- 23 confession? Tactics.
- 24 A Not at the academy, but I've been through interviewing and
- 25 interrogation classes before.

1 Q So in addition to the criminal justice academy, you go to
2 additional -- we call them continuing legal education. What do
3 you call them?

4 A Correct. Continuing education would be applicable.

5 Q And in the continuing education, they taught you tactics ---

6 A Correct.

7 Q --- on how to get a confession?

8 A A truthful confession.

9 Q Well, yeah, a truthful question. They teach you parameters;
10 right?

11 A Correct.

12 Q Teach you these parameters that you have to follow to get a
13 truthful confession, what you can and can't do. Right?

14 A Correct.

15 Q Because there's laws about what you can and can't do with
16 confessions ---

17 A Correct.

18 Q --- and so you have to learn that; right?

19 A Correct.

20 THE COURT: Let me stop you. It is getting really difficult
21 for our court reporter because you're stepping on every one of
22 his answers.

23 ATTORNEY HUBRICH: Yes, ma'am.

24 THE COURT: And I'm going to ask you to please stop.

25 Because I know she's being wonderfully patient. But I expect her

1 to go running out of the courtroom screaming any moment.

2 ATTORNEY HUBRICH: I can do it, Judge. I'll take it down a
3 notch.

4 THE COURT: You don't have to take it anywhere. Just please
5 don't step on his answers.

6 ATTORNEY HUBRICH: Yes, ma'am.

7 Q And they teach you these parameters because there are laws
8 that tell you things you can and can't do?

9 A Correct.

10 Q You can play to their emotions?

11 A Correct.

12 Q You can talk to them about their mama?

13 A Correct.

14 Q Their grandmama?

15 A Correct.

16 Q You did that in this case?

17 A I did.

18 Q You can't deny them a phone call?

19 A Correct.

20 Q You can't deny them food or water?

21 A Correct.

22 Q You can't promise them leniency?

23 A Correct.

24 Q There's a reason. The reason for this is to prevent false,
25 or coerced, confessions. Right?

1 A Correct.

2 Q So you interrogated Muanah Fortune twice?

3 A Correct.

4 Q Each one was approximately an hour?

5 A I believe an hour the first time, and 40 - 45 minutes the
6 last time.

7 Q And at no point during the interrogation did you offer him
8 food?

9 A I did not.

10 Q At no time during the first interrogation did you allow him
11 to make a phone call?

12 A He made one in between.

13 Q In between the two interrogations?

14 A Correct.

15 Q The solicitor made a point of asking you yesterday what you
16 would do if he had requested food or water, and you said,
17 Absolutely, we would have honored his request.

18 A We would have.

19 Q He actually asked to make a phone call to his mama during
20 the first interrogation. Didn't he?

21 A I believe so.

22 Q And you denied it?

23 A Not in the middle of the interrogation. We did allow him to
24 make that phone call afterwards.

25 Q The first interrogation happened at 3:00 a.m.

1 A Correct.

2 Q I watched the interview; you watched it. Everybody's tired.

3 I think you even say, We're really tired?

4 A Correct.

5 Q Muanah was tired? Is that a yes?

6 A I can't speak for him.

7 Q He kept telling you, I don't really know what was going on,

8 he kept expressing confusion?

9 A I took that as a ploy to try to distance himself from this

10 incident.

11 Q Well, he told you that he was up here just to visit his

12 friend, Jaquavious Washington?

13 A Correct.

14 Q And he told you he was getting a ride home from these guys

15 in a Honda CR-V?

16 A That he left Jaquavious's; started walking; ended up at a

17 gas station and ran into these guys.

18 Q And that he didn't participate in this crime?

19 ATTORNEY CORNWELL: Your Honor, note my continuing

20 objection. Bruton.

21 THE COURT: Okay. Thank you. Overruled.

22 A I'm sorry, can you repeat that again?

23 Q He kept telling you, I didn't participate in this crime.

24 A Correct.

25 Q I don't know what you're talking about.

1 A Correct.

2 Q During the interrogation, the first one, you used your
3 confession tactics that you learned at the continuing education;
4 right?

5 A Correct.

6 Q I want to ask you about the promises of leniency, I want to
7 talk about that first. I'm going to show you what's already been
8 marked and admitted into evidence as State's Exhibit 192.

9 The solicitor put this into evidence and talked about all
10 the rights that Muanah signed. Right?

11 A Correct.

12 Q And I think he even played a clip of you reading this to him
13 and him signing it. Correct?

14 A Correct.

15 Q And at the bottom, the waiver of rights?

16 A Correct.

17 Q I fully understand each of these rights as I have been
18 advised. I wish to waive these rights and answer these
19 questions. Says, No threats, force or promises of any kind have
20 been made to me by anyone to induce or cause me to waive these
21 rights and answer questions. Have I read that correctly?

22 A That is correct.

23 Q Yet he signed this before you interrogated him. That was
24 the very first thing you did; right?

25 A Correct.

1 Q Because you hadn't made any promises to him at this point.

2 A I've never made any promises to him at all.

3 Q Well, we're going to talk about that, actually. But you did
4 that, that statement, that State's 192, you did that prior to
5 questioning him?

6 A Correct.

7 Q So that was the first thing he signs. No promises have been
8 made to me, he signs that. Right now no promises have been made.
9 And then we start into the first hour?

10 A As we do with every interview. Correct.

11 Q In that first interview --

12 ATTORNEY HUBRICH: Tonda, can we connect Pierce's computer?

13 Q And he's telling you, I don't know what you're talking
14 about, this crime; I wasn't at that house with a gun; I wasn't
15 there. Right?

16 A Correct.

17 (WHEREUPON, State's Exhibit 191 is published to the jury.)

18 Q So we've got him in an interview room. And it's you and
19 another officer. Right?

20 A Correct, me and Captain Driscoll.

21 Q It's 3:00 in the morning; correct?

22 A I believe so.

23 Q And you tell him -- he's told you what happened, and you
24 said, I don't think you're telling the truth.

25 A Correct. His story wasn't lining up with the facts as we

1 had them.

2 Q And then you say this to him ...

3 (WHEREUPON, State's Exhibit 191 is published to the jury.)

4 Q You say, We've got to be honest with each other, we've got
5 to do that to make sure you walk out of here; I can't do that if
6 you lie to me. Did I hear that correctly?

7 A That is correct. That statement there, to make sure you
8 walk out of here, at this point he's detained, he's in custody,
9 but we don't know his exact involvement.

10 If he would have provided me information that I could have
11 corroborated with physical evidence or from the other defendants
12 that showed that he wasn't involved in this whatsoever, then
13 there's a possibility that he could have.

14 Q Did you tell him that right then and there? Did you make
15 that whole little disclosure to him right then and there? Or did
16 you just say, You've got to tell me something different to make
17 sure you walk out of here?

18 A At 3:00 in the morning, I don't think I said all that. No.

19 Q So it's really about what he's thinking at this point,
20 right, not what you're thinking?

21 A I can't answer that.

22 Q So we've got a young kid. How old was he when you
23 interrogated him?

24 A I believe he was 21 at the time.

25 Q He was 21. Did he have any prior record?

1 A No, he didn't.

2 ATTORNEY OSBORNE: Objection, Your Honor. Relevance.

3 THE COURT: Asked and answered. It's sort of out there.

4 But, yeah, it would be sustained.

5 Q And it's 3:00 in the morning. You've taken his shoes at
6 this point, I think a shoe lift. And you say to him, You've got
7 to be honest to make sure you walk out of here. Right?

8 A Again, I'm back to my previous statement.

9 Q I mean, would you think that was a promise of leniency if
10 you're 21 sitting there being interrogated?

11 A As an adult, no.

12 Q Maybe if you're an adult.

13 (WHEREUPON, State's Exhibit 191 is published to the jury.)

14 Q So in this clip you're saying, So that's your story. He's
15 telling you this is what happened, and you say, That's your
16 story, but we already know what happened. Right, that's what you
17 tell him?

18 A Correct.

19 Q And then you say, We're giving you an opportunity to come
20 forward.

21 A Correct.

22 Q Do you happen to know how many times you gave an opportunity
23 to Muanah Fortune during that interrogation?

24 A Numerous.

25 Q Over 35 times you said to him, Take this opportunity.

1 Right?

2 A It's a tactic. Yes.

3 Q And you don't consider that a promise?

4 A No. That's a tactic.

5 Q And you say to him, There are cameras in the house. There
6 were cameras in the house. Right?

7 A Correct. And at that time we were unforsure (sic) if they
8 did record something. So it was, I believe that I also stated,
9 our techs are working to find that out. We're waiting for them
10 come in and review all that information.

11 Q There's no video footage of the house?

12 A Correct. They weren't active.

13 Q And then you say, You're 21; you've got no record.

14 A Correct. Again, a tactic.

15 Q I think, this one, you went over with the solicitor during
16 your direct yesterday.

17 (WHEREUPON, State's Exhibit 191 is published to the jury.)

18 Q Next one.

19 (WHEREUPON, State's Exhibit 191 is published to the jury.)

20 Q So this is all still the first interrogation; we're all
21 still in the first hour?

22 A Correct.

23 Q And you say to him, Do you want to spend the rest of your
24 life in prison?

25 A Correct.

1 Q And then you say, This is your opportunity to get your
2 version of events out in front of everyone else.

3 A Correct.

4 Q Again, with the word opportunity. Right?

5 A Basically it was his opportunity.

6 Q And then you say, Do you hear them mumbling? And you can
7 hear some mumbling next-door. Right?

8 A It's actually Captain Driscoll. But, yes.

9 Q Okay. Well, he says, Can you hear the mumbling?

10 A Yes.

11 Q That's your buddy next-door talking?

12 A Correct.

13 Q But it goes on.

14 A It does.

15 (WHEREUPON, State's Exhibit 191 is published to the jury.)

16 Q Hard to hear that, but you say, You've got to get your
17 version of events out in front of everyone else, man, that's why
18 we came to you first. Right?

19 A Combination between myself and Captain Driscoll, yes.

20 Q We figured your involvement was less; that's why we're with
21 you. You're 21; you're young; you're nervous; you're scared. We
22 figured your involvement was minute.

23 A Again, minimization tactic.

24 (WHEREUPON, State's Exhibit 191 is published to the jury.)

25

1 Q This is all still the first interview; right?

2 A That is correct.

3 Q And you say, You've got this one chance tonight, right now.
4 Right?

5 A Correct.

6 Q And then you say, This is what is going to go before a
7 judge; this is what's going to go before a jury; and you're going
8 to sit here and watch a video of you.

9 A I believe that's happening right now.

10 Q I believe that's happening right now. But the implication
11 is, If you just tell us what we want to hear, that will never
12 happen.

13 A No. I believe it's opportunity to get the truth out and to
14 show just like we're doing right now.

15 Q Him sitting here charged with murder?

16 A If that's the truth, yes.

17 (WHEREUPON, State's Exhibit 191 is published to the jury.)

18 Q Help me help you. You're promising to help him there;
19 right?

20 A I'm not promising him to help him, but I want him to be
21 honest with me. Again, a tactic.

22 (WHEREUPON, State's Exhibit 191 is published to the jury.)

23 Q And so right now you're saying, I don't want to you throw
24 your life away at 21; you don't have even have a criminal record;
25 right now you're looking at your life being flashed in front of

1 you.

2 A The first statement was mine. The second was Captain
3 Driscoll's.

4 Q But those are things that are being used right in that room
5 with Muanah Fortune?

6 A Correct.

7 Q Do you know, was this the point that he asked to call his
8 mama?

9 A I don't recall.

10 Q But at some point during all of this he says, Can I call my
11 mama?

12 A I believe so.

13 Q And you don't let him?

14 A No.

15 (WHEREUPON, State's Exhibit 191 is published to the jury.)

16 Q And that's you talking right there; right?

17 A Correct.

18 Q And that's where you say, This is your opportunity to
19 possibly get a second chance. Right?

20 A Correct. And I think the key sentence will be the last one,
21 to make things as right as possible.

22 Q Does this feel right to you, Muanah Fortune sitting here,
23 charged with murder?

24 A It does.

25 Q I think you testified on direct, you testified on direct, I

1 think the state asked you, You didn't yell; you didn't hit him;
2 you didn't raise your voice -- or, no violence. He said, You
3 didn't yell; you didn't raise your voice, and you didn't use any
4 violence, that was his question to you. And you said, No, I
5 didn't. Correct?

6 A Correct.

7 Q And then he said, But you were getting frustrated.

8 A I think that's fair.

9 Q And so ...

10 (WHEREUPON, State's Exhibit 191 is published to the jury.)

11 Q So what's going on now, he's been telling you, I didn't have
12 anything to do with it; I wasn't in that house. Right?

13 A Correct.

14 Q And you say to him -- and we're frustrated -- Well, maybe
15 you're just the trigger man. So now we're starting to suggest
16 things to him. It's another tactic; right?

17 A I think I said, You're not the trigger man. You said, Just.

18 Q Maybe you're not the trigger man, but you were there.

19 A Correct.

20 Q And so now we're starting to suggest what could have
21 possibly happened; right? Isn't that another tactic?

22 A Yep. Minimization again.

23 Q And also giving him little bits of facts, things that he can
24 hang on to?

25 A I don't believe I provided him any facts there.

1 Q Well, maybe you're not the trigger man, but you were there.
2 Right? He didn't mention trigger man to you; did he?

3 A No, he didn't.

4 Q Up until then he's saying, I wasn't even there. Right?

5 A Correct.

6 Q But you're saying, Well, you were there, but maybe you
7 weren't the trigger man. You're giving a way out?

8 A Correct. Minimization.

9 Q So in the eyes of the Lord and everybody else, that makes
10 you just as guilty as if you sit here and lie about it. Correct?

11 A Correct.

12 (WHEREUPON, State's Exhibit 191 is published to the jury.)

13 Q You go from being a witness to being a suspect because you
14 don't want to talk. That's a big deal, to go from a witness to
15 being charged with murder. Right?

16 A Are you asking my opinion?

17 Q Yes.

18 A I say it's fair.

19 Q And at this point he just breaks down; right?

20 A No. Well, what do you mean by break down?

21 Q He starts crying.

22 A I believe so.

23 (WHEREUPON, State's Exhibit 191 is published to the jury.)

24 Q So we've given him some, you know, Tell us the truth and
25 you'll walk out of here; You've got some opportunities. We

1 suggested some things to him. We told him that he could go from
2 being a witness to a suspect unless he starts talking. And now
3 he's crying.

4 And still he's telling you, I wasn't in the house. Right?
5 He still hasn't confessed to anything right now?

6 A No. He never confessed to anything at that point.

7 Q So then we start talking about his mama.

8 (WHEREUPON, State's Exhibit 191 is published to the jury.)

9 Q And you say to him, You're 21. And he's crying, he's got
10 his head on the table; right. Looks like he's crying, at least.
11 Right?

12 A I believe so. Not full-out bawling, but I think he's
13 tearing up.

14 Q And you say, You're 21, you're 21; you've got your mama
15 sitting there about to die; you need to be there for her, you
16 need to be there for your grandpa; you can't do that stuff
17 sitting up here alone. Is that what you said to him?

18 A It is.

19 (WHEREUPON, State's Exhibit 191 is published to the jury.)

20 Q So now we've switched the discussion to erasing mistakes.
21 Right?

22 A Again, a tactic. If you play that clip in its entirety, I
23 start off by asking why an eraser was on top of a pencil. And
24 the answer was to erase a mistake. It's a common tactic we use.

25 Q That's right, you had a pencil sitting in front of him. And

1 you picked it up and you talked about the eraser on the end.

2 A Correct.

3 Q And you say to him, Help me help you erase your mistake.

4 A Correct. A common tactic.

5 Q Now I'm just going to talk about practical matters. When
6 you erase something, that means it disappears?

7 A Well, obviously we can never erase the death of Mr. Weaver.
8 But again, a tactic.

9 Q And you don't consider that a promise?

10 A Absolutely not.

11 (WHEREUPON, State's Exhibit 191 is published to the jury.)

12 Q So I just want to -- I want to look at this for a minute.
13 You're an adult; he's 21. Right?

14 A We're both adults.

15 Q He's got no prior record, no interaction with the criminal
16 justice system before this?

17 ATTORNEY OSBORNE: Objection, Your Honor. Relevance. And
18 foundation.

19 ATTORNEY HUBRICH: I'll withdraw. It's already in evidence.
20 It's already testified, he's already testified to this.

21 THE COURT: Okay.

22 Q Okay. And you've got a gun. I'm looking at it. You've got
23 a gun right on your hip there; right?

24 A Yes, I do.

25 Q And there's another officer sitting right behind you?

1 A I believe Captain Driscoll had walked out already.

2 Q Okay.

3 A The interview is over ---

4 Q Right.

5 A --- at this point. And to be honest, this is my frustration
6 coming out. As an African American male, I was frustrated with
7 the continued violence in our community. And that's what went
8 out.

9 Q I can see that. You're frustrated, you've got a gun on your
10 hip, and you are actively leaning over this 21-year old.

11 A Not actively leaning. I'm talking to him. Again, the
12 interview's over. I'm explaining to him my frustration that he
13 is throwing his life away.

14 Q You wouldn't characterize this as leaning over? You're
15 closer to him than you were before. Right?

16 A Right. Because we're done talking.

17 Q Well, you're not done talking, though, because you
18 interrogate him again.

19 A That was -- our intentions were to never talk to him again.
20 He gave a statement. But when we go into the booking area and we
21 lock eyes again, he looks at me and he says -- and I asked him if
22 he wants to talk again, he says, They're going to kill me;
23 they're going to kill me.

24 Q I want to ask you about that. Is that on video?

25 A I don't believe so.

1 Q Everything else in this case is on video, but that's not on
2 video?

3 A Because he is in the booking area. He's not in the
4 interview room.

5 Q I want to talk a little bit more about suggesting things to
6 him, feeding him information. The solicitor played just a couple
7 of clips. I know I've gone into it a bit more in depth.

8 But the solicitor played a couple of clips yesterday, and I
9 watched them, and I took notes. And in one of them you said to
10 him, Were you there when your buddies shot this guy? I think
11 that was clip 3A.

12 A I believe so.

13 Q And he didn't answer; he didn't say anything.

14 A No. There's a lot of silence there for some of these
15 questions that he answered -- or ...

16 Q But with that one, he didn't say anything. Do you remember?

17 A I believe that's accurate.

18 Q Then you said, Were you in the house when the shooting took
19 place? Or maybe Captain Driscoll. Somebody said, Were you in
20 the house when the shooting took place? Right?

21 A Correct.

22 Q Did you go to the back bedroom? That was the next question.

23 A Correct.

24 Q Did someone kick the door in?

25 A Correct.

- 1 Q And he is not answering any of those things; right?
- 2 A I believe that's accurate.
- 3 Q That's because up until now he's saying, I wasn't in the
- 4 house.
- 5 A Correct.
- 6 Q So you guys are giving him this information during that
- 7 first interview. I think it was clip 3B. 3A. Right?
- 8 A I don't know if we're giving it to him, because he already
- 9 knew.
- 10 Q Well, maybe. Because then you let him go cool in a hallway
- 11 for three hours. What did you call it, booking area?
- 12 A He was in a cell waiting on transport.
- 13 Q And that cell doesn't have video?
- 14 A No, not to my knowledge.
- 15 Q At any rate, around 3:00 a.m., regardless of what's said in
- 16 the hallway, around 7:00 a.m. this kid ends back in the
- 17 interrogation room with you and Captain Driscoll?
- 18 A Correct.
- 19 Q And you went back over his rights, that piece of paper I
- 20 slowed you?
- 21 A Right.
- 22 Q This time, however, you don't talk about promises of
- 23 leniency. You didn't read that part to him. Right?
- 24 A I didn't have him sign the form again. I read the Miranda
- 25 waiver, and quickly asked -- I summarized the last part of the

1 waiver of rights, and asked if he was willing to speak with me.

2 He said he was. And we went right into it.

3 Q Well, so I want to look at it again. The part at the bottom
4 that I put up there, No threats, force or promise of any kind has
5 been made to me by anyone to induce me or cause me to waive these
6 rights. You did not read that to him ---

7 A Correct.

8 Q --- the second time?

9 A Correct.

10 Q Because at this point we've already done some tactics?

11 A Tactics, yes.

12 Q When you started that second interview he kept telling you,
13 I was picked up from that gas station. That's how he started it;
14 right?

15 A Correct, which still wasn't making any sense.

16 Q Right.

17 A There's no Sunoco anywhere near where they were.

18 Q Well, you thought it didn't make sense based on this
19 timeline that Marcus Porter and David Swibaker had given you.

20 So then he says -- you keep questioning him and he says, I
21 can't remember. That's where he starts, that's where he starts
22 this whole second interview, I can't really remember.

23 A He states, It's all a blur.

24 Q Yeah, yeah. I think he said, I'm confused and it's all
25 jumbled up. Right?

1 A What I remember him saying, It's a blur. I don't remember
2 the other part.

3 Q I saw in clip 4B from yesterday that Driscoll, I think, said
4 to him, Which gun, revolver, 9 millimeter?

5 A Correct. He means caliber.

6 Q So now he knows that a 9 millimeter is used. If he didn't
7 know before, now he knows a 9 millimeter was used. Right?

8 A Correct.

9 Q And we know he was in the car with Elijah Green and Devonte
10 Major. Right?

11 A Correct.

12 Q So we know that he was in the car where they were?

13 A Correct.

14 Q So if he didn't know about the 9 millimeter before, now he
15 knows about the 9 millimeter, because I think Driscoll says to
16 him, Did you use a revolver or the 9 millimeter. Right?

17 A Correct. He never mentions a brand.

18 Q But eventually he breaks. That's what you would call it;
19 right?

20 A I call it him being truthful.

21 Q But still his story isn't making sense, so you continue to
22 suggest things to him, or Captain Driscoll does. I think, in
23 clip 4C, you ask him, Were you in the house? It's a series of
24 questions that he doesn't answer again. Were you in the house?
25 Did you have a gun? Did you go beyond the kitchen? Did you

1 throw a mattress? Did you kick the door in?

2 It was a whole series of questions that you gave to him at
3 this point that he really doesn't answer.

4 A Correct. I think we're giving him, we're telling him we
5 know these things. And he's, at that point, he's starting to
6 realize, Okay, the gig's up, I can't continue to lie anymore.

7 Q Well, that's what you think he realizes. But he says, I
8 went in a room, I just went in and looked around. Right? That
9 was one of the first things he said, I think, I went right into a
10 room.

11 A Correct.

12 Q And everyone else is say, No, someone's shooting a dog;
13 these guys are standing by the back door. But what Muanah tells
14 you is, I went right to the room and I looked around?

15 A Correct. I believe he also states that he doesn't recall
16 about the third white male. That seemed to really confuse him.

17 Q That's right. He doesn't remember things that were actually
18 going on.

19 A Well, I think that corroborates the statement of Mr.
20 Swibaker that he was hidden at that time.

21 Q Well, you said to him -- maybe Captain Driscoll said it.
22 And I heard it yesterday. My guess is that you were with a guy
23 who was unarmed?

24 A Correct.

25 Q Did you park nearby, or did you have to walk?

1 A Correct.

2 Q And now he starts just picking options. Did you have to
3 walk nearby, or did you have to walk? He says, Oh, we had to
4 walk. Right?

5 A He's recalling stuff.

6 Q Or regurgitating. You said, Did you park on the street?
7 No. Yes?

8 A Correct.

9 Q I mean, you saw the clips ---

10 A Yes, ma'am.

11 Q --- from yesterday. Am I correct in saying that you and
12 Captain Driscoll were doing 98 percent of the talking?

13 A I couldn't put a percentage on it, but, yeah, there's us
14 talking.

15 Q I'm sorry. I mean, it was you guys saying, Were you in the
16 car? Or, Where did you park the car, on the road or on the
17 street? On the street. Did someone kick the door in? Yes. Who
18 was it? It wasn't me, I don't know. I mean, you're giving him
19 this information, and he's just barely answering you.

20 A He corroborated facts that we ---

21 Q Well, let's talk about that, corroborating facts and stories
22 not making sense. At one point in the clip yesterday Captain
23 Driscoll says, What about masks, did you have a mask on? And he
24 says no.

25 A Correct.

1 Q That's a problem, right, because the witnesses say all four
2 of these guys had masks on?

3 A I believe in the heat of the moment, that he tied up --
4 scrunched down on your face can be misconstrued as a mask.

5 Q So you say to him, What about masks? And he says, No,
6 didn't have a mask on. And that's a problem, because all of them
7 had their face covered.

8 A Correct.

9 Q The witnesses say masks?

10 A Correct.

11 Q And so you hesitate for a minute. I think Captain Driscoll
12 says, Are you sure?

13 A Correct.

14 Q And Muanah says, No, I didn't have a mask on. And then they
15 said, Did you have a hoodie on? He says, Oh, yeah, I had a
16 hoodie on. Because he's wearing a hoodie and he's sitting there
17 with a hoodie on. Right?

18 A Correct.

19 Q And then Captain Driscoll says, Was it loose or was it
20 pulled tight? Right?

21 A Yes.

22 Q And he says, Yes, it was pulled tight. Right?

23 A Correct. I think if you look at his body language, that was
24 a truthful statement.

25 Q I'm going to show you what's been marked and admitted into

1 evidence as State's Exhibit 203, the sweatshirt Muanah Fortune
2 was wearing that night. Are there any strings?

3 A There are not. But I believe those were removed at the
4 jail.

5 Q Well, if they were removed at the jail, they'd certainly be
6 in evidence; correct? I mean ...

7 A I would have to go back and look at the video of the
8 interview to tell you if they were removed at the jail or not.
9 That is typical, when they're referred to intake at the jail,
10 that they remove shoestrings, belts, all that stuff.

11 ATTORNEY HUBRICH: The Court's indulgence.

12 THE COURT: All right.

13 Q When you're conducting the interview he's already got the
14 sweatshirt on. Right?

15 A Correct. He walked right into the room with the American
16 Eagle sweatshirt that you had up.

17 Q And in the picture that I showed, picture of the evidence,
18 there's no strings on that sweatshirt. Right?

19 A Again, I think the string was removed at the jail.

20 Q You think? Do you know?

21 A I can't say 100 percent.

22 Q Have you seen it at any time during this trial, the strings?

23 A I have not. But I didn't open the evidence bag to look,
24 either.

25 Q As the interrogation went on, you asked him where he put the

1 gun, and he said, I can't remember. Right?

2 A Correct.

3 Q You asked him where he parked, and he said ---

4 A Sorry, go back to that. Can you repeat that one again?

5 Q You asked him where he parked, and he said, I can't
6 remember?

7 A Correct.

8 Q Would it surprise you to you know that during the second
9 interrogation Muanah said, I don't know, over 25 times?

10 A That would be accurate.

11 Q At one point during the second interrogation Captain
12 Driscoll says to him, Is it all now coming together; is it coming
13 back to you now?

14 A Which would be common. This is, what I would assume, a
15 traumatic event for all involved.

16 Q Muanah Fortune didn't even have a cellphone on him that
17 night; did he?

18 A No, he did not. He stated he left it at home.

19 ATTORNEY HUBRICH: The Court's indulgence.

20 THE COURT: All right.

21 Q I'm going to go play a clip for you real quick ---

22 A Okay.

23 Q --- of Muanah walking into the interview.

24 (WHEREUPON, State's Exhibit 191 is published to the jury.)

25 Q I don't see a string.

1 A I don't see the gold rings visible, either. It's possible
2 that that's been admitted into evidence. I can open it up and
3 see if the strings are in there.

4 ATTORNEY HUBRICH: Thank you. I have no further questions,
5 Judge.

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

7 **CROSS-EXAMINATION**

8 BY ATTORNEY CORNWELL:

9 Q Detective Davis, I'm going to go through just a few things
10 with you.

11 A Yes, ma'am.

12 Q You just went over, in your cross-examination, that
13 Mr. Porter never said that Weaver gave a wallet; that
14 Mr. Swibaker never said he was hit on the back of the head. That
15 was all information that just came out last week during
16 testimony?

17 A Yes, ma'am.

18 Q And you would also agree that Mr. Porter has never told
19 anybody that he remembered someone maybe wearing camo?

20 A I believe that's accurate.

21 Q It's accurate that he's never said that to law enforcement?

22 A Correct.

23 Q Because that's a pretty big thing. So it wouldn't have been
24 until he was in court seeing things that he, all of a sudden,
25 two-and-a-half years later, would have realized that and

1 testified?

2 A Again, I can't speak on his behalf.

3 Q But never anywhere has he ever mentioned any of that?

4 A Not to my knowledge.

5 Q And he never remembered anyone wearing gloves, either?

6 A I believe that is correct.

7 Q You personally kept asking him about them and he said, Man,
8 you keep asking me about gloves; I just don't remember any
9 gloves.

10 A I don't remember that conversation, but it would be
11 memorialized in my report if that's true.

12 Q If it were on the interview video, that would be accurate,
13 you would agree with that?

14 A Yes, ma'am.

15 Q And then you were trying to get information about the other
16 people, you were trying to get any sort of description as
17 possible. Correct?

18 A Correct.

19 Q And while there was never any mention of camo, you asked at
20 some point, Do you remember anything about the other guys, did
21 any of them have shorts on or anything like that? And he said,
22 Yes, now that you mention it, I remember one of them wearing
23 shorts?

24 A Correct.

25 Q And you would agree, based on the clothing that we've seen,

1 the video that we've seen, none of the four suspects from the car
2 were wearing shorts; were they?

3 A Mr. Green had a pair of black basketball shorts underneath.
4 He had several layers of clothes on.

5 Q Underneath pants?

6 A They could have been put back on. I wasn't with him.

7 Q But again, you testified that you were believing the
8 timeline of Porter and Swibaker in that law enforcement
9 immediately got behind them. And now you're saying that maybe
10 they had time to change clothes before that?

11 A In a 30-minute chase, I would think that would give you
12 plenty of time to change clothes.

13 Q And then you also were aware that there were cameras in the
14 alleged victim's home. Correct?

15 A Correct.

16 Q And you didn't do a search warrant on those cameras to see
17 if they caught anything?

18 A After talking to Mr. Porter, I don't believe that they -- we
19 went through that and they weren't activated so, therefore, there
20 was no video footage that could be -- they weren't, like, on a
21 constant record. He would have had to activate them for the
22 information to be saved.

23 So since they weren't activated, no information was saved.

24 Q But the only reason that you believe that they weren't
25 activated is because Porter told you they weren't activated?

1 A That is correct.

2 Q So you are basically a human lie detector. You know when
3 people are telling the truth, and you know when people are lying?

4 ATTORNEY OSBORNE: Objection, Your Honor. That's
5 argumentative.

6 THE COURT: Cross-examination. He can answer, if he can.

7 A I wouldn't classify it as that. We do our best.

8 Q So you take the word of Porter; you take the word of
9 Swibaker; you take the word of Washington, but you don't take the
10 word of Mr. Fortune when he says he wasn't there?

11 A His story was not lining up.

12 Q So again, you get to determine who's being truthful and
13 who's not, who you want to believe and who you don't want to
14 believe?

15 A I look at the facts.

16 Q And the facts are, through the course of your investigation,
17 you found out that Mr. Porter was lying to you at various points?

18 A I wouldn't classify that as a lie. He wasn't forthcoming
19 with his criminal activity, but it wasn't a lie.

20 Q He wasn't forthcoming. He told you he was a small-time
21 dealer?

22 A Correct.

23 Q And he's charged with trafficking right now; correct?

24 A I believe those are after this.

25 Q He was also convicted of distribution at some point;

1 correct?

2 A At some point.

3 Q So in your experience with law enforcement you don't
4 typically charge somebody with trafficking or distribution if
5 they're just small-time?

6 A It depends how much amount and what type of drug. You could
7 be just a user and you bought a larger amount at one time, and
8 you are going to get charged with distribution or trafficking.

9 Q So, in other words, we aren't talking about gruesome lies;
10 we're just talking about justification on how you can make a lie
11 the truth?

12 A No, I don't believe so.

13 Q But, in your opinion, Mr. Porter was not dishonest with you
14 at any time?

15 A I don't believe he directly lied to me. Again, he was not
16 forthcoming, but he didn't lie.

17 Q And you admit that Mr. Washington did lie to you the first
18 time y'all met?

19 A Again, I guess you can possibly classify that as a lie. I
20 don't know if he was intending to deceive me or his recollection
21 of the events of where he was that night were clouded by drug and
22 alcohol use.

23 Q So in the first interview when he said, I was not there, I
24 was not at that house; and then in the second interview where you
25 confront him with evidence and he completely changes his story,

1 that's not, in your opinion, a lie?

2 A Again, I would have to go back and see if he was trying to
3 deceive me.

4 Q If he was trying to deceive you would that not be considered
5 a lie?

6 A If he was trying to deceive me, yes, that would be a lie.

7 Q And you also admitted that typically when you go in and you
8 ask people if they're involved in a crime, their indication is
9 not to immediately say, I am; my bad; you got me?

10 A I wish it was that way.

11 Q So the first time you meet Washington and you tell him about
12 this crime, he tells you he wasn't involved, wasn't there. You
13 later find out that's not true, and you don't know if that was
14 him trying to deceive you or not being honest?

15 A Again, his statement the second time was, Yeah, I did leave
16 a few times with my girlfriend with drugs, we were high, she was
17 looking to buy drugs, we were all over the place, I'm not quite
18 familiar with the area, that was believable.

19 Q But that's not, though, because he tells you he's not
20 familiar with the area but we know that he's been to Marcus
21 Porter's house multiple times based on what Porter and Swibaker
22 had told you. Correct?

23 A He had been to the house, but that doesn't mean he's
24 familiar with the area.

25 Q Didn't he also tell you that his employer works in that

1 area, as well?

2 A I believe so.

3 Q So he is familiar with that area?

4 A Interpretation.

5 Q I guess that's a commonsense interpretation. So let's get
6 back to what you just said. You confront him with evidence that
7 he was at the scene of the crime at the time the crime occurred?

8 ATTORNEY OSBORNE: Your Honor, I'm going to object. This
9 whole line of questioning is all hearsay. What did Jaquavious
10 Washington tell you? That is hearsay.

11 ATTORNEY CORNWELL: Your Honor, that's information that he's
12 already told. He just gave a whole rendition. Not in answering
13 my question, but he's opened the door to it at this point.

14 ATTORNEY OSBORNE: He's literally up there answering
15 questions.

16 THE COURT: Let me hear the question. Don't answer it.

17 ATTORNEY CORNWELL: Your Honor, I just asked him if
18 Washington lied to him, and he said he couldn't remember, he was
19 on drugs, he said he was riding around in a car with a
20 girlfriend, they were trying to buy drugs.

21 He's the one that said Mr. Washington said all that. I just
22 asked him if he lied.

23 THE COURT: Do you have a question for him?

24 ATTORNEY CORNWELL: I have another question. Yes, ma'am.

25 THE COURT: Ask that question.

1 Q So you just mentioned about him saying that he was in a car
2 being driven by his girlfriend; they were looking to buy drugs.
3 He also admitted that at the time police passed by him that night
4 but didn't stop him?

5 THE COURT: All right. Stop.

6 ATTORNEY OSBORNE: That is hearsay. That is an out-of-court
7 ---

8 THE COURT: It is hearsay. It's also compound-something.
9 Okay. Sustained. Unless you have an exemption.

10 ATTORNEY CORNWELL: Your Honor, my exemption would be it's
11 being used to impeach the investigation and what was done in this
12 case and what was not done in this case and how they followed up.

13 THE COURT: Okay. Sustained.

14 Q So through your investigation and the records that you
15 reviewed and the witnesses that you spoke to and the alleged
16 victims that you spoke to, you were able to put Jaquavious
17 Washington in the area of the incident at the time of the
18 incident in a car being driven by someone else?

19 A I would have to go back and look at the exact mapping.
20 Again, the analyst, to my knowledge, didn't provide a table, so
21 to speak. So the cone, or the range, could be anywhere from one,
22 five, ten miles. So that's going to be a factor.

23 And also, it doesn't put him at [REDACTED] Myrtle Place at that
24 time. I can't say that he was at the house.

25 Q That's your knowledge, but that's not what you confronted

1 him with. You told him, We know you were at [REDACTED] Myrtle Place
2 during the time of this incident, and he says ---

3 ATTORNEY OSBORNE: Objection, Your Honor.

4 ATTORNEY CORNWELL: Your Honor, he's already ---

5 ATTORNEY OSBORNE: This is hearsay.

6 ATTORNEY CORNWELL: He's already answered this, Your Honor.

7 THE COURT: You talking on direct?

8 ATTORNEY CORNWELL: Two minutes ago.

9 THE COURT: Come here a minute, please.

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

12 THE COURT: You're going to need to ask the question again
13 because the witness probably isn't going to remember it.

14 ATTORNEY CORNWELL: Yes, Your Honor.

15 Q So I'm going to go back a little bit.

16 A Sure.

17 Q First time you met with Washington he gives you the
18 statement and says he wasn't there, wasn't anywhere near the
19 place. Correct?

20 ATTORNEY OSBORNE: Objection, Your Honor. Calls for
21 hearsay.

22 THE COURT: Sustained.

23 Q Was there anything in your investigation the first time you
24 met with Mr. Washington that would lead you to believe that he
25 was there that night?

1 A Repeat.

2 Q In the first time you met with Mr. Washington, was there
3 anything that would make you think he was there that night?

4 A No.

5 Q And then you requested a search warrant for his phone
6 records; correct?

7 A Correct.

8 Q And as part of that search warrant for phone records, you
9 requested cellphone tower data?

10 A Correct.

11 Q And that is because it gives GPS locations of where people
12 and phones are; correct?

13 A I believe the purpose -- without seeing the search warrant,
14 I believe the purpose of the search warrant was more to
15 corroborate phone calls that were made.

16 Q And as part of that you asked for the tower records, and you
17 were able to review that data?

18 A Yes.

19 Q And after reviewing that data you decided to interview
20 Mr. Washington again?

21 A Correct.

22 Q Because you did not believe he was being truthful with you
23 in the first interview?

24 A There were questions raised that we wanted answers to. Yes.

25 Q And when you are re-interviewing him, would you admit that

1 you're not really getting very far with him in the beginning of
2 that interview?

3 A Can I refer to my report?

4 Q Sure.

5 THE COURT: Yes, you may.

6 A Okay. Can you repeat question? Sorry.

7 Q When you started interviewing him the second time, in the
8 beginning of that interview he wasn't being completely
9 forthcoming again. Correct?

10 A Correct.

11 Q And so you confront him with the search warrant records that
12 you got from the cellphone, and you told him, We know you were
13 there that night.

14 A A tactic. Yes.

15 Q You say it was a tactic but you simply told him, Based on
16 those records we know you were there that night?

17 A Yes.

18 Q And then at that point, through the rest of your
19 investigation after you talk with him, after you reviewed the
20 tower records, you talked to Mr. Porter, you know he's been to
21 the house and you know he knows where the house is, through your
22 investigation, were you able to make a determination as to
23 whether Mr. Washington was, in fact, in the area of the incident
24 at the time of the incident?

25 A I would have to review those cell maps to know the exact

1 time of the phone call that you're referring to.

2 Q So the only way you would be able to determine it -- you
3 wouldn't be able to determine it based on what somebody told you;
4 you would only be able to determine it based purely on the phone
5 records?

6 If somebody told you whether or not they were there or not,
7 would you not take that as information putting somebody there?

8 A He told me that he was not there. Is that your question?

9 Q In the first interview. In the second interview when you
10 confronted him with cellphone tower records ---

11 A Correct. He advised that he was multiple places. He didn't
12 know exactly where he was.

13 Q Were you ever able to determine if he was in the area when
14 police cars passed by that night in that area?

15 A That, I was not. I mean, it's not uncommon for a police car
16 to drive up and down roads. So without a specific road or a
17 time, I can't confirm.

18 Q So you've got phone records of him in the area, confirmation
19 of him in the area in a car with a girlfriend, and police lights
20 passing by him in the area?

21 A Again, the area is defined as the cone, and I believe that
22 area covers five miles or more, would be my guess.

23 Q What you told him was the Robynwyn neighborhood, ■■■ Myrtle
24 Place, that's the area we're talking about, that's the area you
25 told him, and that's the area that you got all this information

1 elicited from. Correct?

2 A What information elicited from? I'm confused.

3 Q That he was in the area of the incident at the time of the
4 incident in a car with his girlfriend with a police car passing
5 by.

6 A So in the area, with him during this interview, would be
7 defined from the map, the cone on the map. That cone covers an
8 undetermined amount of area, depending on who analyzed it. So
9 again, that could be one mile from that tower to five miles from
10 that tower. I don't know.

11 Q And then we talk about you never got a buccal swab from
12 Washington to compare to the DNA. You never got his fingerprints
13 to compare to the evidence. Never got a search warrant for his
14 residence to see if any of his shoes matched the shoe print.
15 Correct?

16 A When we interviewed him he was incarcerated and didn't have
17 a stable address from what we could tell, so we couldn't do a
18 search warrant on a home. I don't believe we had enough probable
19 cause to do that, either. Did not have probable cause to obtain
20 a search warrant for DNA.

21 Again, everything we had pointed to four defendants, four
22 suspects, from the 911 call, the officers spotting the vehicle
23 and four people in it moments after. We had no reason to
24 believe -- our working theory is that Mr. Washington pointed out
25 the house to the four. He didn't participate, he wasn't there,

1 but he possibly pointed it out.

2 Q How does he point it out if he's not there?

3 A At the time of the incident was not there. So as, That's
4 the house; bye.

5 Q So again, he would have had to be at the incident location?

6 A Again, I can't put him there.

7 Q You just said ---

8 A That's our theory. That's our theory.

9 Q Okay. And you claim that you didn't have enough probable
10 cause.

11 A Right.

12 Q Let's talk about probable cause for search warrants. You
13 have information that Jaquavious Washington was with -- and,
14 first of all, I'm actually going to go back to what you just
15 said. You didn't need to follow up because you had four guys and
16 there were four guys, and you had four guys in the car, and you
17 had your easy answer and said you didn't want to look for more
18 answers. That's your four.

19 A That's not true. We kept digging. Otherwise we wouldn't
20 have been talking to Mr. Jaquavious at all.

21 Q And you kept digging because you were trying to make sure
22 you could support your four guys in the car?

23 A We kept digging to make sure we had all the facts.

24 Q But you find out all this information that puts
25 Mr. Washington there, and you just let it go.

1 A Again, I can't put him there. If I could charge him, I
2 would have.

3 Q DNA could possibly put him there; couldn't it?

4 A If I had probable cause to get that search warrant.

5 Q Okay, now we're talking about probable cause. So you've got
6 Jaquavious Washington, who you know was with the suspects that
7 day, that night.

8 A Correct, according to him and others.

9 Q The only connection between Marcus Porter and David
10 Swibaker's house is through Jaquavious Washington?

11 A To our knowledge, yes.

12 Q None of the suspects had any relation to Marcus Porter,
13 David Swibaker or that house?

14 A Say it again. I'm sorry?

15 Q None of the four suspects had any connection to Marcus
16 Porter, David Swibaker or that house?

17 A Not to my knowledge.

18 Q So the only person that does is Jaquavious Washington?

19 A Correct.

20 Q Washington knows Swibaker; Washington knows Porter;
21 Washington's been to the house multiple times?

22 A And Washington knows the four defendants.

23 Q And Washington knows the four defendants. He was with them
24 the night of this incident.

25 A Correct.

1 Q And then you also have that he had called Marcus Porter the
2 night before to find out if he had drugs in his house that he
3 could sell them?

4 A I don't know the exact -- can you repeat that?

5 Q You have information from Marcus Porter that Jaquavious
6 Washington called him the night before to make sure that he had
7 enough drugs that they could buy \$100 worth of drugs, they needed
8 \$100 of drugs from him?

9 A That is correct.

10 Q And then you get cellphone tower records, and you talk to
11 Washington and you get information that he's in the area.

12 A Again, the area ---

13 Q I know, the area, the towers, the one mile, five mile. But
14 you get that information?

15 A Correct.

16 Q And you don't think that is enough probable cause to get a
17 search warrant?

18 A I do not.

19 Q Would you agree with me that you have gotten search warrant
20 on less?

21 A I would have to look at them.

22 Q Would you agree with me that officers in the First Circuit
23 in the Summerville Police Department have gotten search warrants
24 on less?

25 ATTORNEY OSBORNE: Objection, Your Honor.

1 THE COURT: Sustained.

2 Q How much more information do you need to get a search
3 warrant?

4 A I would need more ---

5 ATTORNEY OSBORNE: Objection. This calls for speculation.

6 THE COURT: Sustained.

7 Q Did you attempt to get a search warrant, or you just
8 determined that nobody would give you a search warrant?

9 A Detective Moy and I debated, but we never applied for one,
10 no.

11 Q Did you ever follow up with Mr. Washington's girlfriend or
12 try to get any sort of corroboration to anything that
13 Mr. Washington may have told you?

14 A I don't believe we had her, all of her, information to speak
15 with her.

16 Q So kind of like Mr. Porter or Mr. Swibaker, you're just
17 taking what he says as it applies to your case?

18 A We were just lining up the facts.

19 Q Porter and Swibaker both said the door was kicked in, and
20 none of the shoes collected match the shoe print on the door. Is
21 that correct?

22 A That's correct.

23 Q And none of the victims ever were able to give a description
24 of anybody in that house other than Green and Major?

25 A They were able to identify shoes.

1 Q But nothing that definitively states that Polo Salazar was
2 in that house; nobody identified Polo Salazar in that house?
3 Correct?

4 A Correct.

5 Q You were asked questions about Mr. Fortune's interview and
6 how Mr. Fortune never says that his cousin, Jaquavious
7 Washington, was in the house. Correct?

8 A Correct.

9 Q Because, quite frankly, when you interviewed him that night
10 you didn't know anything about Jaquavious Washington at that
11 time; did you?

12 A No, we did not.

13 Q And you kind of mentioned this with Mr. Porter and
14 Mr. Swibaker, that they only gave you information when asked?

15 A Correct.

16 Q And we've seen what y'all did to Mr. Fortune and the
17 promises and things of that nature. But you never asked him
18 about his family being there. Correct?

19 A I had no reason to believe his family was there.

20 Q Well, after you met Mr. Washington, did you ever go back and
21 try to confirm or find out anything else from Mr. Fortune about
22 whether or not Mr. Washington was there?

23 A By that time, he would have been represented by counsel.

24 Q Did you ever contact counsel to see if you could
25 re-interview him to find out whether Mr. Washington was there?

1 A We did not.

2 Q So again, you don't really want to follow up?

3 A We do. We did.

4 Q You do, but you didn't in this case?

5 A We did.

6 Q And by follow up, you didn't talk to corroborating witnesses
7 to find out truthful statements; you didn't try to get any
8 evidence that would inculcate or exculpate somebody.

9 By saying following up, you took whatever was told to you at
10 face value, and that was the end of it?

11 A There were numerous search warrants drawn. And this
12 incident report is over a hundred pages long. We conducted a
13 thorough investigation.

14 Q But no follow-up on Mr. Washington?

15 A We did. We talked to him twice.

16 Q And just took him at his word?

17 A Everything -- we came to a dead end.

18 Q You also mentioned that when you went to go get Mr. Fortune
19 the second time that he had made some sort of eye contact with
20 you. And Ms. Hubrich asked you if there was video of that, and
21 you said there's not video in the cell, he was in a booking area.

22 A Correct.

23 Q But the booking area does have cameras; doesn't it?

24 A I believe it may, but there's no audio. At least, not to my
25 knowledge.

1 Q But when you said that you didn't know the booking to have
2 cameras, that's not accurate. The booking area does have
3 cameras?

4 A Right, the exterior. To my knowledge, inside the cells,
5 there is not cameras.

6 Q So in order for you to make eye contact with Mr. Fortune,
7 you would have had to actually go up to the door and look into
8 the cell?

9 A He was not in a cell. He was in a separate room, for some
10 reason, because I believe they were getting ready to transport.
11 So literally I walked through the room, saw him. He was sitting
12 in a chair. We made eye contact. And I approached him.

13 Q And you don't believe that was caught on camera?

14 A With him sitting in that room, I don't believe there's
15 cameras inside that little room.

16 Q And when you were investigating this case did you go and
17 talk to any neighbors, talk to anybody in the neighborhood to see
18 if they saw anything suspicious or anything that would identify
19 anybody that night?

20 A There was an area canvass done. I don't believe we
21 developed any information that was credible.

22 Q When you say an area canvassed, did you talk to people or
23 did you just walk around and look around?

24 A I believe we knocked on doors. I don't believe -- either we
25 did not make contact with anybody, or they did not see anything,

1 or it would have been memorialized in the report.

2 Q But there's nothing in the report saying that y'all spoke to
3 anybody?

4 A There's nothing in the report to say we spoke to anybody who
5 saw anything or had information in regards to the case.

6 Q But your reports document everything, so even if you spoke
7 to somebody and they didn't have information it would be
8 important to document that information as part of your
9 investigation; correct?

10 A If we spoke to them and they didn't have information, we
11 probably didn't document it.

12 Q You would agree with me it's important to document all
13 information as part of your investigation?

14 A That's accurate.

15 Q But your testimony now is you left things out of this
16 investigation report?

17 A Did we put the people in there? If they're not in there,
18 then that was an oversight.

19 ATTORNEY CORNWELL: Thank you.

20 THE WITNESS: And they had no knowledge.

21 ATTORNEY CORNWELL: Thank you, Officer Davis. No further
22 questions, Your Honor.

23 THE COURT: All right. We're going to take our morning
24 break, ladies and gentlemen. Please step to your jury room.
25 Remember, do not discuss this matter or allow anyone to discuss

1 it with you. We're going to take 15 minutes. Please step to
2 your jury room.

3 (WHEREUPON, the jury is escorted out of the courtroom at
4 11:21 a.m.)

5 THE COURT: All right. Please be mindful not to discuss
6 your testimony with anyone during the break, Detective Davis.
7 And then we'll take 15.

8 (WHEREUPON, court recessed at 11:22 a.m. and reconvened at
9 11:38 p.m.)

10 ATTORNEY OSBORNE: May we approach?

11 THE COURT: Sure.

12 (WHEREUPON, an off-the-record discussion is held at
13 sidebar.)

14 THE COURT: Anything before we bring the jury out?

15 ATTORNEY OSBORNE: Nothing from us.

16 ATTORNEY CORNWELL: No.

17 ATTORNEY HUBRICH: No, ma'am.

18 (WHEREUPON, the jury is seated in the courtroom at
19 11:41 a.m.)

20 THE COURT: Ladies and gentlemen, it has been brought to my
21 attention that we may have one or more jurors who are making
22 audible sounds during the presentation of this case. Let me be
23 clear.

24 You have been instructed not to discuss this matter or allow
25 anyone to discuss it with you. If you are making audible sounds

1 during the presentation of this case, you are discussing this
2 case, in my mind. And the reason for that is that audible sounds
3 can be perceived by your fellow jurors as a comment, as a
4 statement of pleasure or perhaps displeasure. That is discussing
5 this case, in my mind.

6 I will not tolerate it. I expect not to hear anyone tell me
7 that they have heard audible sounds during the presentation of
8 this case by anyone.

9 If anyone has any questions about that, feel free to raise
10 your hand.

11 (No response.)

12 THE COURT: Very well. I find no one is raising their hand.
13 Very well. Yes, sir. You may continue.

14 ATTORNEY OSBORNE: No questions, Your Honor.

15 THE COURT: All right. You can come on down. All right.
16 Yes, sir, please call your next witness.

17 ATTORNEY OSBORNE: The state calls Dr. Nicholas Batalis.

18 CLERK OF COURT: Doctor, if you'd please raise your right
19 hand, and state your full name for the record.

20 THE WITNESS: Nicholas Ike Batalis.

21 **NICHOLAS I. BATALIS,**

22 having first been duly sworn, was examined and testified as
23 follows:

24 THE COURT: All right. Your witness.

25 ATTORNEY OSBORNE: Thank you, Your Honor.

DIRECT EXAMINATION

BY ATTORNEY OSBORNE:

Q All right. Dr. Batalis, since you introduced yourself to the jury, where are you employed?

A I'm employed at the Medical University of South Carolina.

Q Okay.

A I'm sorry. The jury is over here?

Q Should have given you a preview. COVID. You're actually sitting in the old jury box, and our jury's out here.

A Okay. Thank you.

Q Okay. In what capacity are you employed by MUSC?

A I'm employed as a professor in the Department of Pathology Medicine, primarily as a forensic pathologist.

Q And how long have you been there?

A It will be 13 years in July.

Q What is your educational background?

A I completed my undergraduate degree at Butler University in Indianapolis, Indiana. After graduating from college, I went on to the medical school at the Indiana University School of Medicine. After graduating medical school, I then moved down to Charleston to MUSC for a residency for training in general pathology. After the completion of a four-year training program, I passed a national exam to become board-certified in general pathology; then went on to do a one-year specialized fellowship training in forensic pathology at the Dallas County Medical

1 Examiner's Office in Dallas, Texas. And again, at the end of
2 that year passed another exam to become board-certified, and then
3 took my current position.

4 Q In your current position do you have any continuing
5 educational requirements?

6 A Yes. Our licensing board, both within the state and within
7 our field, have requirements. I think it's somewhere around 30
8 hours a year. And I see that.

9 Q What is your area of specialty or your field of expertise?

10 A Forensic pathology is my main area of practice.

11 Q And what does the area of pathology consist of?

12 A Sure. So general pathology deals with the study and
13 diagnosis of disease. So that a general pathologist, if you had
14 a biopsy taken or a tumor cut out, the surgeon would hand that to
15 the pathologist and that person would determine if it's cancer
16 and, if so, what type of cancer.

17 Pathologists also oversee the clinical laboratories. So if
18 you have any blood work done, a pathologist would be the one
19 that's overseeing all those operations.

20 Forensic pathology is then a subspecialty within the field
21 of pathology that primarily deals with determining the cause and
22 manner of death through the performance of autopsies.

23 Q And approximately how many autopsies have you performed?

24 A I don't have an exact log, but at this point it's probably
25 over 2,000 and less than 3,000.

1 Q Have you ever been qualified as an expert in a court before
2 in the field of forensic pathology?

3 A I have. I think twice in Texas, twice in North Carolina,
4 and probably getting close to a hundred times here in South
5 Carolina.

6 Q Have you ever failed to qualify as an expert?

7 A I have not.

8 ATTORNEY OSBORNE: Your Honor, at this time we would offer
9 Dr. Nicholas Batalis as an expert in the field of forensic
10 pathology.

11 THE COURT: Is there any voir dire?

12 ATTORNEY WEHMAN: No, Your Honor.

13 ATTORNEY CORNWELL: No, Your Honor. No objection.

14 THE COURT: Any objection?

15 ATTORNEY WEHMAN: No, Your Honor.

16 ATTORNEY CORNWELL: No, Your Honor.

17 THE COURT: So qualified. Thank you.

18 Q All right, doctor. Did you have the occasion to perform an
19 autopsy in this case, Mr. Joe Weaver?

20 A I did, on January 30th of 2019.

21 Q Okay. And can you tell me, what was Mr. Weaver's height and
22 weight?

23 A We measured him at 73 inches in length, so it would be six
24 foot and one inch. And he weighed 273 pounds.

25 Q Okay. Before we get into the injuries in this case, did you

1 make note -- with the gunshots -- did you make note of any other
2 injuries to Mr. Weaver? And I'm directing your attention
3 specifically to the facial area.

4 A Yes, I did.

5 Q And what was that?

6 A So he had a couple of healing lesions on his legs, also on
7 the back of his left hand, and a couple on the right hand, as
8 well, and then had a couple abrasions on the bottom of the chin,
9 so on the face area.

10 Q The face area, bottom of the chin. Well, I realize that
11 it's tough sometimes to put dates or timestamps on injuries, but
12 did those injuries, in particular on the face and the chin,
13 appear consistent with having been inflicted at or about the time
14 of the murder?

15 A They did. They looked more, they had a more fresher
16 appearance compared to some of the lesions we saw on the hands
17 and legs that looked like they had healed for some period of
18 time. So these did appear to be fresh, or approximately the time
19 of death.

20 Q All right. In reference to the gunshot wounds to
21 Mr. Weaver, did you prepare a diagram depicting Mr. Weaver's
22 injuries in anticipation of trial?

23 A I did.

24 Q Would referring to that diagram assist in your explanation
25 to the jury the extent, location and the nature of Mr. Weaver's

1 injuries?

2 A I believe it would.

3 (WHEREUPON, State's Exhibit 189 is marked for
4 identification.)

5 ATTORNEY OSBORNE: Your Honor, may I approach?

6 THE COURT: You may.

7 Q All right. I'm showing you what's been marked as State's
8 189. Could you take a look at that and tell me if you recognize.

9 A Yes, I do.

10 ATTORNEY OSBORNE: Your Honor, at this time we'd seek to
11 admit 189 into evidence.

12 ATTORNEY WEHMAN: No objection.

13 ATTORNEY CORNWELL: No objection, Your Honor.

14 THE COURT: Very well.

15 (WHEREUPON, State's Exhibit 189 is admitted into the
16 record.)

17 ATTORNEY OSBORNE: All right. Your Honor, may Dr. Batalis
18 use the overhead on this side to point out and explain what's
19 happened?

20 THE COURT: As long as -- uhm, let me see. Just hold on a
21 second. Let me see you.

22 (WHEREUPON, an off-the-record discussion is held at
23 sidebar.)

24 THE COURT: Ladies and gentlemen, what we are talking about
25 is we used to have technology that this would be unique, what

1 we're about to see, would be very helpful. But what we've had to
2 do technology-wise is to accommodate the changes in the courtroom
3 to allow for the cases of COVID. And CDC guidelines, things had
4 to be moved around. And apparently our fancy screen that you
5 draw on has been disconnected.

6 So we all go back to the old-timer days. And I used to have
7 a laser pointer, but -- yeah, you might just ...

8 ATTORNEY OSBORNE: Just have him step down?

9 THE COURT: Yeah, have him step down. I'm going to ask you
10 all before we do that, ladies and gentlemen, it's being projected
11 over here, and he could use this monitor. But I'm worried about
12 our jurors over here being able to see. Can y'all see? On this
13 side, can you see the monitor here to my left? I'm looking for
14 this (indicating). I'm looking for this (indicating). Yes? No?
15 Who can see it? Who can't see it?

16 (One jury raises his hand.)

17 THE COURT: Okay.

18 JUROR: I can't see the letters.

19 THE COURT: Interesting. And on the screen to my right,
20 jurors who cannot see it? Everyone can see the screen over here?
21 Okay. Well, you're correct, why don't we use that one.

22 I need -- now, I don't know how y'all are going to do this
23 for me, I need you to hang from your feet from the ceiling so
24 that, as you point to things, you don't block the screen. If
25 y'all can accommodate me, that would be great.

1 And you've got to give me lots and lots of volume because
2 you won't have access to the microphone, and the court reporter
3 needs to be able to hear you.

4 ATTORNEY OSBORNE: Okay. Yes, Your Honor.

5 THE COURT: Thank you so much.

6 ATTORNEY CORNWELL: Your Honor, with the Court's permission,
7 may I move?

8 THE COURT: Yes, absolutely. Now, given where people are
9 positioned, can you all see? Is there anyone that can't see?
10 All right, everybody can see.

11 You can't move. No, you've got to stay right there. We're
12 going to glue you to the floor. Can y'all still see? I'm going
13 to put on you hold. Thank you all so much.

14 Q All right, doctor. Now, we are looking at, what number was
15 it again, State's 189. So let's just, if you don't mind, give
16 the jury an overview of the notations that you made, and just
17 generally explain them. And then we'll try to hammer down the
18 details.

19 A Sure. So this is just a general body diagram. We make
20 these things during the course of an autopsy, but it gets kind of
21 sloppy with lots of notes. So this is a cleaned-up version that
22 really just shows the gunshot wounds.

23 We have a key up here. If there's a circle, it's going to
24 be the entrance wound, where the gunshot enters the body. If
25 there's an X, that's where the exit wound is. If there's a B,

1 there's actually a bullet that we recovered from the body. And
2 then this circle with an X through it, it's indetermined, so
3 there were two wounds on this individual that were very close to
4 one another, that made it kind of impossible to say which was the
5 entrance and which was the exit.

6 Q Okay. And the numbers that you have, do they necessarily
7 indicate sequence of gunshots?

8 A No. The numbers are just for the purpose of descriptions so
9 that I can relay which gunshot wound I'm talking about. They
10 don't relay what order the gunshots occurred or the severity of
11 the injuries that they occurred.

12 Q Okay. All right. Probably, and you tell me you, might be
13 easiest to start with gunshot labeled no. 1.

14 A I believe so. So on the body, in total, there were eight
15 gunshot wounds. The first is gunshot wound no. 1. You can see
16 it enters on the upper right side of the cleft. After entering
17 the body, the bullet's entry traversed across the chest and
18 abdomen; they went through the right lung; they went through the
19 liver; and then exited, kind of, the left flank/left side of the
20 abdomen.

21 So the bullet, essentially if it was on me, would be
22 traveling kind of downward, right to left, and then just a little
23 bit from his front to his back.

24 Q And along those lines -- well, I'll just ask it like this.
25 That's a pretty steep angle; is that correct?

1 A Yes. The gunshot entered 16 inches below the top of the
2 head, and the exit was 24 inches. So it would have dropped about
3 eight inches during the course through the body.

4 Q And that one went through the body, out of it?

5 A Correct.

6 Q All right. Go ahead to no. 2.

7 A And just closing on gunshot no. 1, as it went through the
8 lung and the liver, it did cause significant bleeding on the
9 right side of the chest, around the right lung, and a little bit
10 of blood in the abdomen.

11 Q Let me ask you one other question, too. I forgot. In your
12 expert opinion, would that have been a fatal shot?

13 A It certainly could have due to the perforation of the right
14 lung and the bleeding that occurred from that.

15 Q Okay. I'm sorry. Now 2.

16 A The second one wound is gunshot wound no. 2. Again, it's
17 also on the right side of the body, a little bit lower than where
18 gunshot no. 1 was. This bullet went essentially straight across
19 the body. You can see the exit for this is on the left side of
20 the back.

21 So if it enters right here on me and then would exit back
22 this way. So again, for the most part, this gunshot went
23 straight across the body. It did also go a little bit downward.
24 Just a little bit less, though, than the first gunshot.

25 And again, this one struck several vital structures, so

1 significant organs including the liver, the aorta which is the
2 big blood vessel which takes blood from your heart to the rest of
3 your body, and then his left kidney, as well. So again, those
4 caused significant bleeding and also could have potetnially been
5 a fatal wound.

6 Q Gunshot wound no. 3.

7 A Gunshot wound no. 3, this is one of the only wounds that's
8 traveling in a different direction. So we have an entrance wound
9 here that's located, this would be kind of the, belly button.
10 The entrance is here. The exit is just off to the side. This
11 one did not really go into the body much at all. It essentially,
12 again just kind of comes in here and exits through the skin just
13 a couple inches off to the side.

14 Q Okay. Did that one cause much injury?

15 A That one did not. Just the skin, that sort of thing. So we
16 would not expect that to cause much significant trauma by itself.

17 Q And all so far, we're talking about through-and-through
18 gunshot wounds?

19 A Yeah.

20 Q No. 4.

21 A No. 4, this is this complex on the front of the right arm.
22 So again, right here on me. There were two wounds that looked
23 nearly identical to one another. And there was a thin track
24 right underneath the surface of the skin, so it's similar to no.
25 3, very superficial wound.

1 So one of these is an entrance, and one's an exit. It's
2 just there was not enough difference between the wounds to say
3 which one was which. So this one would have either been
4 traveling straight across his body, right to left, or straight
5 from left or right.

6 Q What are we on, 4?

7 A That was 4.

8 Q Okay, 5.

9 A Gunshot wound no. 5 is on, the entrance is on, the front of
10 the right forearm, and then the exit is above the elbow on the
11 right side here. So again on me, it would be, entrance would be,
12 somewhere around here. And again, this is kind of the anatomic
13 position, that we call. Enters here, and then exits on the back
14 of the arm.

15 Q And that's a fair point that I didn't mention. At no point
16 are we suggesting that this is how victim was positioned when he
17 was shot. Is that fair to say?

18 A Correct. When I'm speaking about pathways, it's just the
19 relationship of the gun to the body when it was fired. So the
20 gun could be pointing different directions, and then the victim's
21 body could be positioned differently, as well.

22 Q No. 6.

23 A So the last these gunshot wounds, gunshot wounds 6 through
24 8, were all in a cluster on the kind of upper right side of the
25 back, the back of the right shoulder. And essentially once

1 these, even though they're separate entrance wounds, once they
2 got into the skin, the tunneling/the pathway is kind of cross
3 with one another, so it wasn't exactly possible to say which
4 bullet went where.

5 But we do know that three bullets that were retained for the
6 other gunshots, had all exited to this point. But all three
7 gunshots from 6, 7 and 8 stayed within the body. One of them
8 pretty much just came straight across the back. So this V right
9 here, this one just really tunneled underneath the skin of the
10 upper back.

11 The other two bullets that we see here, one ended up in the
12 stomach and one ended up in the chest wall. So again, they came
13 through his back, working from back to front, working downward
14 and from his right to left.

15 So again, on me it would be entering kind of the back of my
16 right shoulder. And then two of the bullets were recovered from
17 this area and, again, one on the back.

18 Two of the wounds, as the bullets moved from here to here,
19 again went through the right lung, again causing significant
20 bleeding. Also went through the stomach, as well. We recovered
21 one from the stomach.

22 Q And are these three shots in the back, these are the three
23 projectiles that were recovered from the autopsy?

24 A Yes. We're totally sure that all three bullets came from
25 three wounds. We just can't say whether, you know, this bullet

1 came from this entrance, this entrance or this entrance. But we
2 do know these three bullets definitely came from these three
3 entrance wounds.

4 Q And I heard 6 caused significant damage, or injuries. Did 7
5 and 8?

6 A Two of these three did. So I don't know whether this was 6
7 or this was 6, but two to three would have hit the right lung and
8 possibly cause fatal injuries.

9 Q Okay.

10 ATTORNEY OSBORNE: Well, it might be easier just to do it
11 right here, Your Honor. May I approach the witness?

12 THE COURT: You may.

13 Q I'm going to show you State's 187. Can you take a look at
14 that and tell me if you recognize that.

15 A Yes, sir.

16 Q And what is 187?

17 A These, 187 is, the three bullets that we recovered during
18 the autopsy.

19 ATTORNEY OSBORNE: Okay. Your Honor, at this time we'd seek
20 to admit, if it's not already -- we're just completing the
21 chain -- 187 into evidence.

22 THE COURT: Any objection?

23 ATTORNEY WEHMAN: Just our continuing chain objections, Your
24 Honor.

25 THE COURT: All right. Very well. Over the objection of

1 Mr. Fortune ---

2 ATTORNEY CORNWELL: Same, Your Honor.

3 THE COURT: --- and over the objection of Mr. Salazar,
4 admitted.

5 Q And the last question, Dr. Batalis. Did you determine, in
6 your expert opinion, within a reasonable degree of medical
7 certainty, the manner and cause of Mr. Weaver's death?

8 A I did.

9 Q And what was that?

10 A The cause of death was gunshot wounds to the trunk.
11 Specifically, it could have been 1, 2, and then two of these four
12 wounds that all went through vital organs, including the liver,
13 aorta and right lung. So gunshot wounds of the trunk that led to
14 massive internal hemorrhage.

15 And then the manner of death is homicide, as his death was
16 due to the hands of another individual.

17 ATTORNEY OSBORNE: Thank you, doctor. No further questions.

18 THE COURT: Cross-examination on behalf Mr. Fortune?

19 ATTORNEY WEHMAN: No, Your Honor. Thank you.

20 **CROSS-EXAMINATION**

21 BY ATTORNEY CORNWELL:

22 Q Dr. Batalis, you also ran a toxicology on the victim?

23 A We did.

24 Q And can you tell the jury what was in that toxicology
25 report?

1 A Sure. So as kind of a routine part of all our autopsies,
2 we'll run, we'll send blood and fluid samples to the toxicology
3 lab, as specified by the coroner. In this case, we sent samples
4 of blood to the state law enforcement lab.

5 They were positive for methamphetamine, along with THC, or
6 marijuana, and then some breakdown products of THC.

7 ATTORNEY CORNWELL: Thank you. No further questions, Your
8 Honor.

9 THE COURT: All right. Any redirect?

10 ATTORNEY OSBORNE: None, Your Honor.

11 THE COURT: Is this witness free to leave, and any
12 objection? Thank you, sir, you are free to go at this point.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Yes. Call your next witness.

15 ATTORNEY OSBORNE: State rests, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, you have now
17 heard the witnesses and received the evidence which you will from
18 the state and the state's case in chief. That signifies to me
19 that there are matters that I must take up outside your presence.

20 Counsel, let me ask you to approach.

21 (WHEREUPON, an off-the-record discussion is held at
22 sidebar.)

23 THE COURT: Ladies and gentlemen, I'm going to ask you to
24 please step to your jury room. Do not discuss this matter, do
25 not allow anyone to discuss it with you. And we will be with you

1 shortly.

2 (WHEREUPON, the jury is escorted out of the jury room at
3 12:08 p.m.)

4 MATTERS OF LAW

5 THE COURT: All right. Motions on behalf of Mr. Fortune?

6 ATTORNEY HUBRICH: Judge, at this point we would make a
7 directed verdict motion.

8 THE COURT: Very well.

9 ATTORNEY HUBRICH: We would renew all of our pretrial
10 motions. Even taken in the light most favorable to the state, at
11 this point we think that the Court direct a verdict in favor of
12 Muanah Fortune.

13 THE COURT: Very well, thank you so much. As you know, I'm
14 charged with the responsibility to ascertain whether or not there
15 is evidence on each and every element from which this jury could
16 make a determination of guilt. There is such evidence. I don't
17 weigh it; that's for the jury.

18 I would respectfully deny your motion, noting your exception
19 thereto.

20 And on behalf of Ms. Mr. Salazar?

21 ATTORNEY CORNWELL: Your Honor, we would also move for a
22 directed verdict. I'm going to be a little bit more wordier in
23 mine. Obviously Your Honor is aware that you must direct a
24 verdict in the defendant's favor on any charge of the Indictment
25 that was failure of competent evidence. You are looking for the

1 existence or nonexistence, not the weight.

2 However, there is case law and state law that states that
3 the trial judge should grant a DV when the evidence merely raises
4 a suspicion the defendant is guilty, and the suspicion applies if
5 the belief or opinion of guilt based on facts or circumstances
6 which do not amount to proof, and that DV should be granted when
7 a case is purely circumstantial and the evidence is insufficient
8 to establish the defendant's presence at the scene of the crime
9 at the time of the murder. That is *State v. Martin*.

10 Your Honor, we heard testimony in this case from a number of
11 witnesses. All of the witnesses, the eyewitnesses, have clearly
12 identified Elijah Green and Devonte Major. The testimony with
13 that is black and white Nikes; they have talked about can't
14 describe the others and we don't know what the others looked
15 like.

16 There has been no testimony from anybody that gives any
17 indication of any clothing description from my client, any shoes
18 description from my client, any DNA, any fingerprints, nothing
19 putting my client in the house, nobody identified my client in
20 the house. There is no evidence that has been presented that my
21 client was in this house.

22 And the only thing that they have on my client is that he
23 was in a vehicle. I do not believe that that is competent
24 evidence that places him at the scene of the crime at the time
25 that the crime occurred.

1 And based on that, we believe that a directed verdict is
2 appropriate in this case given that there is no proof other than
3 circumstantial evidence.

4 THE COURT: Thank you. Thank you so much.

5 ATTORNEY CORNWELL: We also renew all of our previous
6 objections.

7 THE COURT: Of course, absolutely. Respectfully based on
8 the evidence I have heard on the DNA, based on the identification
9 of clothing, based upon the testimony with regards to, if you
10 will, the timeline, given the testimony of the numbers of
11 individuals who were present at the location at the time of the
12 alleged event, given the evidence I have heard, there certainly
13 is evidence on each and every element with regards to
14 Mr. Salazar.

15 And I would respectfully deny your motion, and note your
16 exception thereto.

17 All right. Now ---

18 ATTORNEY CORNWELL: Your Honor, I apologize. I just
19 realized that there's an extra charge for my client regarding the
20 stolen vehicle.

21 THE COURT: Yes, ma'am.

22 ATTORNEY CORNWELL: I would also move for a directed verdict
23 on the stolen vehicle. There's been no evidence or testimony
24 placed in the record that Mr. Salazar knew or should have known
25 that the vehicle was stolen. Those are elements that have to be

1 proven by the state. On the fact that there has been no text
2 messages, no conversation, no conspiracy, nothing's been
3 presented to the Court other than the fact that the car was
4 stolen, that Mr. Salazar had any knowledge or awareness or knew
5 or should have known of the stolen vehicle, I don't believe
6 there's any competent evidence with regards to that charge.

7 And we would ask that the additional charge of stolen
8 vehicle, as it applies to Mr. Salazar, be ---

9 THE COURT: Got it. The owner of the vehicle has testified.
10 Obviously he was in possession of it. There were no tags on this
11 vehicle.

12 You know, do you have anything to add to what I've just
13 indicated?

14 ATTORNEY OSBORNE: No, Judge.

15 THE COURT: Very well. There is certainly evidence on each
16 element from which this jury can make a determination that he
17 knew or should have known that this car was stolen. Thank you.
18 Noting your exception thereto.

19 ATTORNEY CORNWELL: Thank you, Your Honor.

20 THE COURT: Now, I need to examine your -- I would simply
21 ask on the record, do you intend to put up a defense?

22 ATTORNEY HUBRICH: No, ma'am.

23 THE COURT: Do you intend to put up a defense?

24 ATTORNEY CORNWELL: No, ma'am.

25 THE COURT: Now I am going to examine your clients. Do you

1 them -- that a defendant is not required to do anything, the
2 burden does remain on the state.

3 However, anything further from the defense at this time.
4 Ms. Hubrich?

5 ATTORNEY HUBRICH: No, Your Honor. We rest.

6 THE COURT: No, we rest. What do you think the colloquy?
7 Any concern about that, Ms. Hubrich?

8 ATTORNEY HUBRICH: None.

9 ATTORNEY CORNWELL: No, Your Honor.

10 THE COURT: Very well. Let's have the jury. Jury, please.

11 (WHEREUPON, the jury is seated in the courtroom at
12 12:21 p.m.)

13 THE COURT: All right. Ladies and gentlemen, the burden of
14 proof, as I told you in my opening instructions, the burden of
15 proof is and always remains on the state to prove guilt beyond a
16 reasonable doubt. We will talk more about that later, however.
17 And a defendant certainly does not have to offer anything.

18 But at this time I would turn to our defendants to see if
19 there's anything additionally. Ms. Hubrich?

20 ATTORNEY HUBRICH: No, ma'am. Defense for Muanah Fortune
21 rests.

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

23 ATTORNEY CORNWELL: Thank you, Your Honor. The defense for
24 Polo Salazar rests, Your Honor.

25 THE COURT: Thank you, thank you very much. Ladies and

1 Wonderful.

2 ATTORNEY CORNWELL: But it's got several cases cited, so I
3 can give those to you.

4 THE COURT: Do you mind passing her the book, and just let
5 her pull those authority? I don't want her to take it from you
6 because, again, my bench will eat and it you'll lose it. All
7 right. And I'll see you at 1:30. Come on back to chambers,
8 y'all.

9 (WHEREUPON, court recessed at 12:27 p.m. and reconvened at
10 2:13 p.m.)

11 THE COURT: Anything from the state before we bring the jury
12 out?

13 ATTORNEY OSBORNE: No, Your Honor.

14 THE COURT: From the defense?

15 ATTORNEY HUBRICH: No, ma'am.

16 THE COURT: I just want to say counsel, I want to thank you
17 so much for spending that time with me in the informal charge
18 conference. It's just tremendously helpful, and I'm really
19 grateful for your time. So thank you for that.

20 ATTORNEY CORNWELL: Your Honor, just for purposes of the
21 record in case I didn't say this in my directed verdict motion,
22 we would also include our previous objections.

23 THE COURT: Yes, you had.

24 ATTORNEY CORNWELL: I think I did, but if I didn't I want to
25 make sure I did.

1 THE COURT: Yes. It's done. Absolutely.

2 (WHEREUPON, the jury is seated in the courtroom at
3 2:15 p.m.)

4 THE COURT: All right. Ladies and gentlemen, I sure hope
5 you had a good lunch. And we are about to hear from the
6 attorneys in their closing arguments. I want to tell you that
7 you are first going to hear from Solicitor Osborne in his closing
8 argument on behalf of the state. You are then going to hear from
9 Ms. Hubrich in her closing argument on behalf of Mr. Fortune.
10 And then you're going to be hearing from Ms. Cornwell in her
11 closing argument on behalf of Mr. Salazar.

12 Once the closing arguments are finished, then there will be
13 a very short break, which will be self-explanatory when we reach
14 that point. I will then deliver the, it's called the, charge, or
15 the instruction, on the law to you. There will then be another
16 short break, and I'll explain that to you when we reach that
17 point. And then, ladies and gentlemen, you're going to receive
18 this case for your deliberations.

19 So at this time I'm going to ask you to please draw close as
20 we listen to closing arguments. Solicitor Osborne.

21 CLOSING ON BEHALF OF THE STATE

22 ATTORNEY OSBORNE: Thank you, Judge. While J.B. was hanging
23 out with his friends, having a good time, showing off his moped,
24 he had no idea that there were four men on their way from
25 Beaufort, coming down to Summerville. And they weren't coming to

1 hang out; they weren't coming to have a good time. They had a
2 plan, a plan to commit a violent home invasion, while armed, to
3 steal some marijuana.

4 Each man brought something to conceal their identity, to
5 cover their tracks, whether that be gloves, masks, or a hoodie.
6 Each man brought with them a fully loaded handgun, with one in
7 the chamber ready to fire.

8 And when that gun smoke settled, one dog was shot dead;
9 another man, Marcus, was shot in the chest; and another man, J.B.
10 Weaver, was shot eight times and left on the floor in a pool of
11 his own blood, fighting for his life.

12 Each man is responsible for that, and each man should be
13 held accountable for that decision, every single one of them.

14 All right. Before I get into the evidence in this case, I
15 want to talk to you about something that was mentioned earlier
16 that is very important in criminal cases. As jurors, you all can
17 judge credibility. It is all yours. If you're looking at a
18 witness, you can believe some, none or all of what a witness
19 tells you. Look at what fits; look at what doesn't.

20 Corroboration is the key. You corroborate what a witness
21 tells you by what another witness tells you, and you corroborate
22 it by the evidence. And if there is a difference, you ask
23 yourself why.

24 And lastly, and most importantly, especially in this case,
25 use your commonsense. You are not required, as jurors, to check

1 your commonsense at the door. Bring your commonsense in there in
2 the deliberation room.

3 All right. I want to start by talking briefly about the
4 times in this case, because the times are really important. Here
5 is the Robynwyn subdivision. There is [REDACTED] Myrtle Place. The
6 time of the murder, well, the time in which the individuals were
7 running out the back, estimated about 12:03, could have been
8 12:02.

9 And you you've heard from Marcus Porter. He's shot in the
10 chest. He's not delaying. He's trying to get help. He's
11 running across the street to Shaneka Wright's house, asking her
12 to call 911. And you know that's true because you heard them
13 jumping the fence as he was running. He gets to Shaneka Wright's
14 house, asks her to call 911. The call came in at about 12:03:23,
15 so we're backing it up a little bit.

16 About four minutes later Officer Scarborough sees the Honda
17 occupied by four individuals right at Fripp Lane, leaving
18 Robynwyn.

19 (WHEREUPON, a portion of a DVD was played.)

20 That's what you call a pucker moment right there. Those
21 four individuals in that car had just got involved, they were
22 just involved in a murder, and they are leaving the scene.
23 Driver looking straight ahead, Polo Salazar. He didn't want to
24 look at the police. Guy sitting behind him, Devonte Major, what
25 did Scarborough say? Had his mouth wide open. That caused that,

1 also, when he saw that car, to have that reaction.

2 All right. Passed the car at 12:07. And you may ask
3 yourself, why is there a four-minute delay from the time in which
4 they left the house to the time that Officer Scarborough sees
5 them? Well, you've heard testimony, and you're looking at
6 Robynwyn right there. This is not exactly the most
7 parallel/perpendicular neighborhood you've ever seen. These
8 roads twisty and turning. These individuals had just gotten
9 involved, were just involved, in a murder. They are fleeing the
10 area. They are from Beaufort. They don't know their way around.
11 Did they take a wrong turn here then? Yeah, probably did,
12 especially with that adrenaline pumping from doing what they just
13 did.

14 But there's more than that. All right. Marcus said that
15 whenever he was running he heard the suspects jump the fence in
16 his back yard. Corporal Cramer said that when he went for an
17 article search with his K-9 looking for evidence he saw what he
18 thought to be footprints in the mud in Marcus's back yard behind
19 the fence. That guy right there, Defendant Fortune, said that we
20 had to park some distance away so we had to, you know, walk. It
21 would have taken some time.

22 If that's true, then you would expect to see mud not on one
23 of the defendant's shoes, not on two, not on three, but on all
24 four. And that's exactly what you see, mud on all four of their
25 shoes. If one's clean, that's a problem. But they're all in

1 this together. They're all dirty.

2 They had a plan. They didn't want to park right in front of
3 Marcus's house. You park in front of Marcus's house, you get
4 involved in a home invasion with a shooting, somebody might see
5 your car. So they had to park some distance away.

6 And while we're talking about shoes, and credibility, David
7 and Marcus told the police on the night of the incident they saw
8 some pretty significant shoes. They saw purple shoes, and clown
9 shoes on a big guy. Bottom left, Devonte Major, wearing purple
10 shoes.

11 And I heard something the defense said in their opening.
12 They said -- I might have this wrong but what I heard was -- the
13 funny thing about the truth, it's easiest to remember right when
14 it happens, not two years later.

15 When David Swibaker was interviewed on the night of the
16 incident, he described one of the shoes as being red, blue and
17 white. You know whose shoes those are? Top right, that guy,
18 Muanah Fortune.

19 All right. Seconds after the car passes Scarborough, it
20 then passes Corporal Cramer and Officer Reynolds. The car then
21 turns left onto 78. Four people broke into the house. Four
22 people are in the car at 12:07. Four people are in the car at
23 12:07:50. All four defendants.

24 And when Cramer and Reynolds get behind the car at 78 and
25 Cedar they noticed that the car doesn't have a tag. When they

1 tried to pull it over, the occupants in that car are simply
2 having none of it.

3 You've heard testimony that the individuals in that car,
4 that guy, Polo Salazar, the second defendant, took officers on
5 nearly a 30-minute chase, going through multiple jurisdictions.
6 Multiple agencies got involved. Colleton County Sheriff's Office
7 had to pull out stop sticks to stop that car. That car was not
8 stopping.

9 I didn't play the whole, you know, chase for you. If you
10 want that then you're going to have to request it. Just put it
11 in a note, send it up to the Judge, We want a computer; we want
12 to see it.

13 And I'll submit this to you. Polo Salazar was driving a
14 2007 Honda CRV at speeds in excess of over 100 miles per hour for
15 merely 30 minutes. You don't run from a stolen vehicle charge
16 like that, risking your life, all the while possibly picking up
17 more serious charges. But you want to know what charge would
18 make you run like that? Murder.

19 All right. After the vehicle stopped, there's our man
20 there, Polo Salazar. He's wearing a camo jacket just like Marcus
21 said a couple years ago. And remember what Marcus said? And I'm
22 not going to try to say it. Balaclava or something. Either way,
23 Marcus said that it was a type of mask where it covers up your
24 mouth, and the hood. Well, you saw from Officer Moy, that's
25 exactly what he's wearing.

1 There's our second guy, Muanah Fortune, front passenger's
2 seat. Devonte Major, the big guy with the purple shoes. And
3 Elijah Green.

4 And that brings up something. Just take a look at Elijah
5 right there for a second. Again, you'll have that video back
6 there if you want to look at it. The question came up, Did he
7 change his outfit? Is this a common look that you see people
8 going around in, with their pants down and their white socks
9 pulled up over the pants? Possibly. He had 30 minutes to change
10 his clothing.

11 These are four guys from the Beaufort-Seabrook area, right
12 after a murder committed by four people, getting out of there.
13 And if you're familiar with that area, you know that the general
14 area that they were heading back to was back home.

15 All right. Detectives then searched the Honda. Found a lot
16 of evidence. On the driver's side floorboard -- again, Polo's
17 the driver -- they find an orange-and-black glove and a knit cap.
18 And I know those percentages and those numbers, you know, were
19 put at you kind of quick, and we've had a lot of time to look at
20 them, but I'm going to have to read this so we're very accurate.
21 You can't mess up.

22 With the knit hat, Ryan DeWane said there were four
23 individuals' DNA, four individuals contributed to that, four
24 individuals touched it in some way, came into contact with it.
25 The mixture is 1.4 septillion times more likely that Polo and

1 three people came in contact as opposed to four people.

2 Black-orange glove, very similar results, 12 octillion times
3 more likely that Polo and three unidentified people contributed
4 than if four unidentified people contributed to.

5 So what does all that mean? It just means it's a very, very
6 strong likelihood, big, big number that Polo came into contact
7 with that, as well as three other people.

8 On the passenger's side floorboard Brooks found that, a
9 GUCCI bag. I thought it was a purse. Ms. Glover advised me, No,
10 men can wear those, they're like fanny packs. You know whose bag
11 that is? That's his big, Polo Salazar. It's got his ID in it.

12 But Detective Brooks found something else interesting about
13 that bag. There was a loose round of .380 ammunition in there,
14 specifically Tulammo and Hornady. That came up. That was
15 important.

16 All right. On the passenger's side where Mr. Fortune was
17 seated, we got a watch; we've gotten, we also got, a face guard
18 tucked into the side right there. Two more watches were found.
19 And these aren't just any watches, right. Marcus told that you
20 both of those black watches are mine; I know they're mine. He
21 even told you, I know who bought them for me, I wore those
22 watches. Swibaker's like, Yep, that's my watch.

23 Swibaker and Marcus did not chase down that Honda and throw
24 those watches in there. The people that were involved in that
25 home invasion and stole the property, two of these guys, two of

1 the four, they're the ones who put it there.

2 And one other point before I move on. We have a license
3 plate in the car, two different license plates in the car. It's
4 just highly unlikely that they were going to drive all the way
5 back to Beaufort with no plate on the car. Probable that they
6 planned on pulling over at some point, tossing out one of those
7 plates. All part of the plan.

8 All right. After the defendants were taken into custody
9 Corporal Cramer and Officer Reynolds then went back and started
10 collecting some of the evidence that they saw discarded from the
11 car.

12 And that's when they found that, an orange mask. Everyone
13 was excluded from it with the exception of Devonte Major, the big
14 buy. And other things they found on there, but the important
15 thing they found on there was a piece of hair, and it was a
16 single-source contributor. That single-source contributor came
17 back 310 septillion times more likely to be that of Devonte Major
18 compared to an unknown person.

19 Officers kept looking. They found, again just right down
20 the road from the ski mask, they found that, a navy jumpsuit.
21 Now, I'm sure y'all were thinking throughout this trial, Well,
22 why is that important, why is a navy jumpsuit important? DNA
23 didn't come back to any of these defendants. Why were they
24 throwing that navy jumpsuit out of the car? Maybe they were
25 wearing it; maybe they weren't. Marcus didn't see it. David

1 Swibaker didn't see it.

2 That's why? That pocketknife right there is a big piece of
3 evidence in this case. When analyzed, Ryan DeWane tells you
4 there were two people that contributed to this pocketknife. When
5 they compared it with J.B. Weaver, it was 340 septillion times
6 more likely that it was J.B.'s Weaver's DNA and an unknown person
7 compared to that of two unknown people. Maybe that was
8 important. That's why they wanted to get rid of it.

9 The glove, again, we have four people's DNA on it. Not
10 shocking. The numbers are bad for Polo again. And this is the
11 matching glove. You will have those gloves with you back there.
12 And I'm going to talk about this evidence here in a second.

13 You're going to have everything up here on this table back
14 there with you. You can put on gloves. You can take scissors,
15 you can cut into them, you can open them up. You can look at
16 everything that's inside those bags. I would just ask you to put
17 them back in bags. We're going to need them again.

18 And the four people, yes, more than one person can touch an
19 item and leave their DNA.

20 Just to illustrate my point about the matching gloves,
21 you'll see it, it's a right and the left one. They're the same
22 gloves.

23 All right. Now, officers knew -- I mean, those are
24 important pieces of evidence, but what's another real piece of
25 important evidence here? The guns. If Marcus was right and all

1 four of those individuals had pistols with them when they broke
2 into this house, well, then those pistols should be somewhere.

3 So Cramer and Reynolds then went back and started thinking,
4 Well, where was the time in which, during the chase, we lost
5 them; when did they have a few precious seconds to discard
6 evidence when we didn't see them? Well, it was right when they
7 turned from Palmetto onto 78. And when they went back, look at
8 what they found? The four pistols, all thrown from the
9 passenger's side of the car.

10 And when Detective Brooks examined those guns, again, with
11 the .380 he found those two specific types of ammunition, the
12 same two specific types of ammunition that he found in the bag
13 with Polo Salazar's ID, the GUCCI bag.

14 The defendants might have been smart enough to get rid of
15 the murder weapons. But this, ladies and gentlemen, was the real
16 smoking gun in this case, this is the smoking gun, this is the
17 evidence that convicts them. Officer Reynolds found this wallet
18 right where he said it was. You heard the chase, but, also, you
19 saw the recording. Just had a window -- just had a wallet go out
20 the window right at White Gables were. They went back to White
21 Gables. They didn't find just anybody's wallet; they found
22 J.B.'s wallet. That wallet wasn't just thrown out of the car of
23 any four individuals; it was thrown out of the car of these four
24 defendants. That wallet did not magically appear on the side of
25 the road by White Gables. It got there because they stole it.

1 I want to take a second and talk about J.B. and just
2 illustrate if it hasn't become clear just how tragic and how
3 senseless this murder really was. If they had simply just waited
4 five more minutes, J.B. would have gotten on his moped and he
5 would have left. And let's be honest. If that happened, we're
6 probably not here today.

7 And now that they're called -- I'm sure these defendants
8 wish they could go back for a do-over. But in life there are
9 just choices and there are consequences, and sometimes there are
10 no do-overs, you just have to live with it.

11 But let's be clear about something, because there's been a
12 lot of blaming in this case. There is absolutely no evidence
13 that J.B. was involved in selling this. None.

14 But this is what they were coming for. And they weren't
15 going to let anyone get in their way. And if there was an
16 unaccounted-for person in that home or a pesky dog that got in
17 their way, they were going to kill them, because they were going
18 to do whatever they needed to do to get this.

19 How do we know, what did the evidence in the case show that
20 would tie these individuals from the Beaufort-Seabrook area to
21 Marcus's house, guys that he didn't even know?

22 Well, you see it right there on his ledger. And you'll have
23 that back there with you, you'll look at it. Marcus wasn't
24 exactly a big-time dealer. Goe (phonetic sp) owes him five
25 bucks; Ashley 40 bucks. This ain't a guy that was making a lot

1 of money doing this.

2 But it's the last entry that's important to us, the Little
3 Brh entry, for 100 bucks. Little Brh owed him 100. Who was
4 Little Brh? Well, that's Muanah's buddy, Jaquavious Washington,
5 or his cousin. He, too, is from the Seabrook area. Marcus sold
6 marijuana to him a couple times. David really introduced Marcus,
7 unwittingly, to the wrong fellow, because he had some really bad
8 friends.

9 All right. So let's talk about, while we're on Fortune,
10 let's talk about his statement for a minute. For a full hour, he
11 lied. He said he came down from Beaufort to Summerville to visit
12 Jaquavious, his cousin, and he was looking for a ride and he just
13 happened to get into the most unfortunate car he could possibly
14 get into, get into a car with some fellows that were from
15 Seabrook and who had just committed a murder.

16 Well, Detective Davis told you that was just silly. They
17 knew that wasn't lining up. So, yes, they did employ different
18 techniques, different strategies, minimize his involvement, tried
19 to be friendly with him. But at no point did they raise their
20 voice. I mean, that's one of the softest spoken, large man I
21 have ever talked to. And you heard it. He never got loud.
22 Never touched them.

23 But don't let the defense fool you into thinking that you
24 should simply disregard his statement. He knew well enough to
25 conceal his identity, to bring a fully loaded gun, one in the

1 chamber. He knew what he was doing. And he knew enough, when he
2 was caught, to try to lie his way out of it and minimize his
3 involvement. And, look, even during the beginning of the second
4 interview look at what he says.

5 (WHEREUPON, a portion of a DVD was played.)

6 Again, if you want that back there with you, these clips,
7 ask for them. They're kind of hard to hear, I understand. Whose
8 idea was it to go over there? It was all just a big blur, can't
9 remember that. But some of the facts later come into focus for
10 him.

11 (WHEREUPON, a portion of a DVD was played.)

12 He didn't know what to do, he was just in that room just
13 messing around. David Swibaker had a little different depiction
14 of what was going on in that room. He was attacked, he was
15 pistol-whipped on the back of his head. That's what brought him
16 to the ground. I don't remember who was in the room. He doesn't
17 even remember anyone being hurt.

18 You know what David described his shoes as? Red, blue and
19 white sneakers. He was in that room with Polo. Devonte, the big
20 guy, and light-skinned guy, Elijah, had drug Marcus into his
21 room.

22 And this must have been one heck of a blur, because I'm not
23 sure if it was on this one or another one, it's kind of hard to
24 hear, but when they say, Well, what about the guy that was
25 injured? What, somebody was injured? The guy was inside of a

1 house where a man was shot over eight times, a dog was shot once,
2 Marcus was shot once, and he forgot all about that.

3 And Driscoll asked him, Well, how many guys did you see?

4 (WHEREUPON, a portion of a DVD was played.)

5 It would be better to have it pulled up tight like Driscoll
6 suggested as opposed to putting that camo face guard that was
7 sitting on the passenger's seat. That looks a lot worse for him.
8 I'm sure, if asked, he probably would have remembered that.

9 (WHEREUPON, a portion of a DVD was played.)

10 All right. So this is the last time that I'm going to get
11 an opportunity to speak to you. After I get finished talking,
12 like Judge Goodstein said, Ms. Hubrich is going to talk, and then
13 Ms. Cornwell, and then you'll hear the charges. So I like to
14 take this opportunity to sort of address any concerns that they
15 might bring up but, more importantly, what you all might think
16 about when you're in the deliberation room.

17 The first thing I want to say is, in regards to the defense,
18 when questioned, questions and assertions are not evidence. The
19 only evidence that has been presented in this case point to these
20 defendants and their guilt. Questions and assertions are not
21 evidence.

22 Ladies and gentlemen, what we call this defense that we have
23 seen for the last week or so, it's desperation, it's a
24 desperation defense. They are throwing whatever they can at you
25 in hopes to confuse and fool you.

1 And the first example of that comes from box G. Boy, box G.
2 Detective Brooks told you when you are taking evidence -- when
3 he's taking evidence, because he does this -- when he transports
4 evidence from the Summerville Police Department to SLED, he puts
5 it into a box.

6 The box is not evidence. The box is unimportant. What is
7 important is that it is packaged and secured properly before it's
8 put into the box. And that's the testimony that you heard. It's
9 not like they threw everything into the box. It was packaged
10 properly and secured.

11 And the next thing that came up -- and this one you saw with
12 your own eyes, I don't even have to sell this one to you -- they
13 showed this to Jackie Davis and they said, Well, here, is this
14 packaged correctly? And Jackie Davis said, No, that's not
15 packaged correctly. Who did that? Who would have done that? I
16 guess they're hoping that you're going to forget Corporal Cramer
17 did this the very day before, he opened it and up looked at it so
18 that he could identify it. That's what happens in criminal
19 trials.

20 I'm not going to try to pretend to know what happens in your
21 professions, but they know what happens in criminal trials.

22 Ms. Nguyen, forensic scientist, said that, Yeah, I open up
23 evidence all the time on the witness stand. Well, do you then go
24 back and re-seal it and package it correctly while you're on the
25 witness stand? No, of course not, I'm on the witness stand.

1 Detective Brooks told you, I don't have any of the equipment that
2 I need here to heat-seal packages and repackage them. Why?
3 Because you're witnesses in a criminal investigation.

4 And I'm going to further double-down on this by saying that
5 you all will have all of this back there with you. When you open
6 it you're not going to be on the chain. This evidence has gone
7 through a scientist and has been analyzed. The chain is over.
8 You can open this, you can look at it, just like the witnesses on
9 the stand did. That was just trying to confuse you.

10 No forensic evidence tying our clients inside the home.
11 Well, I mean, I think we've heard enough evidence to suggest that
12 there was a crime that was committed. I mean, unless you believe
13 that Marcus shot himself and J.B. shot himself eight times, and I
14 suppose the dog shot himself, then a crime was committed in that
15 home.

16 They don't have any evidence that ties anyone to that crime.
17 And you know why? Detective Brooks told you, You want to cover
18 your tracks, you don't want to leave fingerprints, you don't want
19 to leave contact DNA, wear gloves. You don't want to, like,
20 maybe exhale and have, you know, saliva or whatnot come out of
21 your mouth. And also conceal your identity, wear masks. Where
22 would you find the DNA then? In the mask; in the gloves. And
23 that's what you have in this case.

24 But you know what you do have? Some pretty important
25 evidence. If you're inside a house and there's a lot of

1 gunshots -- and in this case we know there was at least ten, at
2 least ten gunshots -- then you would expect to find GSR, gunshot
3 residue, on the clothing, on the jackets of the people who were
4 inside the house. And that's exactly what you have in this case.

5 Both of them, in addition to Devonte and Elijah Green, all
6 had GSR. If one of them didn't have GSR, might be a problem.
7 But you're not seeing that. All of them had GSR.

8 All right. Jaquavious Washington, I'm sure there's going to
9 be some discussion about Jaquavious. I'm sure Muanah's going to
10 say, Not me; Jaquavious. Polo's going to say, Not me;
11 Jaquavious.

12 Did Jaquavious drive in the area and point out that house
13 and say, There's some fellows in there, that's an easy lift; hit
14 it. Maybe. And if there was enough evidence to prove that, you
15 bet Sergeant Davis would have charged him. They were looking at
16 that months later. They knew they got there for a reason, they
17 knew something turned them onto that house. And that's what they
18 were looking at.

19 And were they then going to go back to Q's house after this
20 was over and split it? Maybe. Q wouldn't have broke into that
21 house. Marcus knows him; David knows him. But David and Marcus
22 don't know those fellows. That's why Q had them do it,
23 allegedly.

24 All right. So the defense has made a big deal about no one
25 identifying their clients, so you simply can't convict, talking

1 about eyewitnesses. That's not true. Let's look at Elijah. Why
2 can't David and Marcus give you a better description of the
3 individuals that were in there? Well, let's look at who did look
4 them in the eye, let's look at who did see them. Well, the dog
5 saw them. The dog tried to attack them. The dog is dead. J.B.
6 looked at them, J.B. looked them right in the eye and talked to
7 them. J.B. is dead.

8 If I'm in that house -- and I'm sure they were thinking the
9 same way -- when I saw that, you know where I'm looking? To the
10 ground. Which is exactly why they saw their shoes.

11 Prior burglary, that's more smokescreen. I suppose whoever
12 did this other burglary must be the guys that did this burglary,
13 so you can't convict us. The footprint on that back door didn't
14 match because that door got kicked in before.

15 All right. And then I also heard, The state brought us
16 here. I mean, look, Ms. Glover and I didn't kill anyone; they
17 did. We didn't bring you here; they did.

18 All right. Wade Rollings, more smokescreen stuff. Wade's a
19 thief, he's a disgraced thief, and he was fired and he was
20 charged accordingly.

21 All right. But we have to attack, the defense has attacked,
22 David and Marcus. First they attack David Swibaker because he
23 said he only saw two or three people come through that door.
24 Well, David wasn't -- when David saw what was happening, David
25 got out of there, he ran to the bathroom. All he saw was two or

1 three people come in. When he had the opportunity for cover, he
2 ran into his room.

3 And from his room, he saw two individuals dragging Marcus
4 into his room. Then he was attacked by two other individuals.
5 Two plus two.

6 And then Marcus. I mean, Marcus has pending charges, he
7 sells marijuana. You know, I guess you just can't believe him
8 because he sold marijuana. So I guess if you sell marijuana then
9 you're a victim, too bad, too sad.

10 You did not hear David or Marcus come in here and lie. You
11 know what a lie would have looked like? A lie would have looked
12 like, Those are the guys, those are the two guys that broke into
13 my house. I know it for a fact, those are two of four. They
14 didn't do that. They came in here and told you the truth.

15 And did he, while he was sitting on the bed, after just
16 getting shot in the chest, was he a little bit reluctant to admit
17 to selling marijuana? Yeah.

18 And, look, you saw it, you judge for yourself. But I would
19 submit to you that the way that they treated David was just
20 disgraceful. I mean, you can represent your client, but to tear
21 apart a man like that who's not even saying your client did it
22 over and over and over again. How did that feel? Did it
23 surprise you when Marcus suspected you as being involved in that,
24 how did that make you feel?

25 Marcus had just witnessed his friend get brutally murdered

1 in front of him. He just witnessed his dog get shot. He just
2 got shot in the chest. What do you think was going on in
3 Marcus's mind? Someone had to have thought about this house;
4 someone would have had to have set me up. Maybe it was David. I
5 don't know. He was confused at that time.

6 But it's come clear now. Jaquavious Washington was the
7 inside guy, not David. And even worse than that, can you
8 imagine, from David, where David was at, he just witnessed what
9 he witnessed and he sees his friend on the ground fighting for
10 his life, David got on the ground, with blood coming out of
11 J.B.'s mouth, and performed CPR and lifesaving techniques for
12 what seemed to him like, it must have been, ten minutes. Ten
13 minutes is a long time. We know now it wasn't ten minutes; it
14 was only five minutes that it took Deputy Bowler to get there.
15 But what felt to him for like ten minutes, he was going to try to
16 save J.B.'s life.

17 And then to somehow suggest that David was so cavalier that
18 he was just having a cigarette while his friend was dying. Y'all
19 saw David on the stand. Did that seem to you like he took that
20 easy? Two years later. That is disgraceful and desperate.

21 And let's talk about J.B. What purpose is asking the
22 question of what, to Dr. Batalis, what was J.B.'s toxicology
23 report? What purpose does that serve? If we somehow see that
24 there is drugs or marijuana in J.B.'s system, does that somehow
25 imply that he had it coming?

1 I heard in the opening, and you're going to hear the Judge
2 tell you -- these are some of the things that I took note of --
3 direct evidence is good evidence. And then the flipside to that
4 would mean circumstantial is bad evidence; right? Direct
5 evidence is good, that's the good kind of evidence you want. You
6 don't want circumstantial evidence, that's bad evidence.

7 I doubt you'll hear Judge Goodstein tell you anything like
8 that. I bet what you'll Judge Goodstein tell you is direct
9 evidence versus circumstantial evidence. The law makes
10 absolutely no distinction between the weight or value to be given
11 to direct or circumstantial evidence. There is no good evidence;
12 there is no bad evidence; there is evidence.

13 Now, there's something that -- well, let me give you an
14 example, and then I'm going to tell you the way you need to look
15 at circumstantial. The example, the classic law-school example,
16 the one we all always hear, is that we're sitting right here in
17 the courtroom, we see one person after another come through that
18 door. They're wearing raincoats; they're wet; they have
19 umbrellas that are wet; we hear thunder outside. Nobody has any
20 direct evidence that it's raining because no one saw it. But we
21 have a ton of circumstantial evidence that it's raining. That's
22 circumstantial evidence.

23 The law makes no distinction between the weight or value to
24 be given to either one. Circumstantial evidences is proof of a
25 chain of facts and circumstances indicating the existence of a

1 fact. That's all it is. You can absolutely convict someone on
2 circumstantial evidence and circumstantial evidence alone. Don't
3 let them tell you otherwise.

4 All right. Now I want to talk to you a second about the law
5 and what the defendants have been charged with. But I do want to
6 say something that's important, and I want you to keep this in
7 mind. Do not -- when you're in the deliberation room, if you
8 think Fortune is guilty, don't convict Salazar just because you
9 think Fortune is guilty. Or vice versa. You look at the
10 evidence and you look at the facts, and you weigh them
11 individually on each defendant.

12 All right. And there's something really important about the
13 law. When I was talking about the law, if you hear me say,
14 before or coming up, anything different than what Judge Goodstein
15 tells you, or Ms. Hubrich or Ms. Cornwell, you follow Judge
16 Goodstein's instructions. Ignore us.

17 I'll save murder for last. All right. Both defendants have
18 been charged with burglary in the first degree. Elements: That
19 the defendant/defendants entered the dwelling with the intent to
20 commit a crime. Don't get confused about, Well, I don't know
21 that they intended to enter Marcus's house with the intent to
22 kill someone. It's not the intent to commit a specific crime;
23 it's the intent to commit a crime. And I would submit to you I
24 don't think there's any evidence to suggest that they came there
25 to kill. I'm going to tell about that in a minute. They came

1 there to steal. But they brought guns to make sure that, if they
2 had a problem, they would use them. All right.

3 When entering or fleeing the defendants were armed with a
4 deadly weapon or that it occurred at nighttime. It's not an and;
5 it's an or. This burglary occurred at 12:00 at night. There's
6 no evidence to suggest otherwise. But we have them both.
7 There's evidence to suggest that all four were armed.

8 All right. Attempted murder. The defendants are charged
9 with attempted murder. With specific intent to kill, attempts to
10 kill another person with malice aforethought. I'm going to talk
11 about malice aforethought in a minute.

12 Attempted murder is exactly what you think it is. They
13 tried to kill somebody. And they really tried to kill them.
14 They shot Marcus in the chest. You don't shoot a man in the
15 chest and just hope, I was just trying to hurt you. They were
16 trying to kill him.

17 So possession of a weapon during the commission a violent
18 crime. The defendants were in possession of a firearm during the
19 commission a violent crime. So this one you've kind of got to,
20 it's a little bit tricky. Murder, burglary first and attempted
21 murder are all violent crimes. If you convict either defendant
22 of any one of those three, then you may also elect to convict
23 them of this charge, okay.

24 If you go with the dog charge, ill-treatment of an animal,
25 that's not a violent crime. So you go with the dog charge, that

1 out. Only if you go with one of those three, can you go with
2 this gun charge.

3 And before we get into murder, we have the ill-treatment of
4 an animal. In South Carolina that's what we call killing a dog.
5 The dog in this case, mf'er, immediately knew that those two
6 defendants were coming to do his masters harm. He didn't
7 hesitate to act; he went after them.

8 OBJECTION DURING CLOSING

9 ATTORNEY HUBRICH: Objection, Your Honor. May we approach?

10 THE COURT: Sure.

11 (WHEREUPON, an off-the-record discussion is held at
12 sidebar.)

13 ATTORNEY OSBORNE: All right. Lastly, the last charge, the
14 one why we're all here, is murder. The defendants are charged
15 with killing another person, J.B., with malice aforethought.

16 Now, malice aforethought, it's an old English term. We
17 don't use that term anymore. But it's basically broken down into
18 two ideas.

19 Malice. Malice is the hatred, ill will or hostility toward
20 another person. What is the -- you've heard evidence in this
21 case of the ill will or hostility. Marcus told you that after
22 J.B. was shot, J.B. was on the ground. And what is, and
23 probably, the most heinous and disgusting act that we saw in this
24 case, while J.B. was on the ground, struggling to breathe,
25 fighting for his life, an individual came up and football-kicked

1 him in the face and knocked him unconscious. That individual was
2 probably Elijah Green. But that kick probably flipped J.B. over.
3 And one of the last things that J.B. would hear while he was
4 alive, before he died, was, I bet that hurt.

5 And why do I say it flipped him over? Because, look, the
6 only evidence, the only opportunity, that he would have had to
7 have been shot in the back would have been at that moment. And
8 there are those three gunshot wounds right in his back.

9 Now, Dr. Batalis told you the numbers don't necessarily
10 represent the sequence here. But in this case I think it
11 probably does. And those are the three bullets that were taken
12 from J.B. at the autopsy. And I'll talk about that in a second.

13 All right. It's an intentional doing with the intent to
14 inflict harm. There's no evidence that this was an accident in
15 any way.

16 And lastly, without just cause or excuse. If this were a
17 self-defense case you would hear Judge Goodstein instruct you on
18 what the self-defense law is in South Carolina. You're not going
19 to hear that. There is no excuse; there is no just cause for
20 this murder. It is exactly what it is, it's a senseless murder.

21 And now the aforethought. There is no time requirement to
22 form intent. And this comes back to what I was saying when they
23 made entry. I don't think they went there with the intent. I
24 don't think there's any evidence to suggest that they went there
25 with the intent to murder, or to kill. But there's no time

1 requirement for it. Malice aforethought does not require malice
2 exist for any particular time before the act was committed. The
3 intent to kill can be formed in an instant.

4 And in that regard you probably ask yourself, Well, I mean,
5 why was J.B. shot the first time? Right. Well, Marcus told you
6 that after they broke in and they said, Where's it at; where's
7 the weed at; where's it at, J.B. tried to be the peacekeeper.
8 J.B. started inching towards them. J.B. gave them the marijuana
9 that was inside of his pocket. J.B. said, If you want some weed,
10 I mean, I can tell you where to get some. And he was inching
11 closer and closer. And Marcus said, I just know J.B.'s going to
12 take care of this.

13 Those men probably felt threatened for a reason. J.B. was a
14 big man. He was over six foot tall, over 270 pounds. The closer
15 he got, the more threatened they felt. And I bet his family
16 would tell you if J.B. was going down, he wasn't going to go down
17 without a fight. But this was a fight that he was destined to
18 lose. He was unarmed and outnumbered.

19 All right. Now that brings us to something that I'm sure
20 you've all been thinking about this entire trial. Which guns
21 were used to murder J.B. and who pulled the triggers? But, most
22 importantly, does it really matter? So let's go through the guns
23 real quick. And, I know, because we put a lot of evidence at
24 y'all.

25 So first we have the Taurus 9 millimeter, black and silver.

1 There's no conclusive evidence to indicate that this gun was
2 fired. It's a 17-round magazine capacity. When Detective Brooks
3 found it there were 16 rounds in the magazine, one in the
4 chamber, locked if loaded.

5 The next gun, Smith & Wesson .38 revolver. There were three
6 live rounds in the cylinder, three spent shell casings; six-round
7 capacity, completely loaded. A lot of evidence to suggest this
8 gun was fired, in fact, conclusive evidence.

9 The next gun, the Jimenez .380. One round in chamber, lots
10 of rounds in the magazine. The rounds were two mixtures of
11 calibers, same calibers, again, that were in the GUCCI bag with
12 Polo Salazar's ID.

13 Next we have the Springfield Armory 9-millimeter pistol.
14 Nine rounds in the gun, 16-round capacity. Where are the other
15 seven rounds? They were fired inside the residence. All of
16 those fired shell casings, all seven of them, to the nine of 16
17 fully loaded magazine, all seven come back to the Springfield 9
18 millimeter.

19 We've got three bullets, one found right by his body on the
20 scene, two at the autopsy. Those three bullets, or projectiles,
21 come back matching the revolver. And now we have three other
22 bullets, one from inside the residence, one near the body and,
23 next, another bullet taken from J.B.

24 So what does all this really mean, right? This means that
25 we have a 9-millimeter bullet that was taken from J.B. and we

1 have a .380 bullet taken from J.B. That means that two guns were
2 used to shoot and murder J.B.

3 And remember just one other point. Jamie Green cannot tie
4 up those three projectiles that he says are most consistent to a
5 9. There's no technology to tie up those bullets to those fired
6 shell casings but, in all likelihood, those bullets are going to
7 come from those fired shell casings, right. What he can tell you
8 is that it's most consistent to a 9 millimeter, either one or
9 four. Most evidence would seem to indicate it's going to be
10 four.

11 So we know conclusively two guns, the revolver and the
12 Springfield, are the murder weapons. Two guns, all the evidence
13 shows, were thrown out of the Honda during those few precious
14 seconds that they had to get rid of those guns, along with the
15 other two guns.

16 Does it surprise anyone in this courtroom that Muanah
17 Fortune would take ownership of the gun that was not fired? Did
18 he have that gun? Or did he have the revolver? Does it even
19 matter?

20 These two defendants right here -- are these two defendants
21 right here guilty of murder even if we don't know who pulled the
22 trigger? Well, you bet they are. All four of these defendants
23 are guilty of murder.

24 The law is very clear, the hand of one is the hand of all.
25 If a crime is committed by two or more people who are acting

1 together in committing the crime, the act of one is the act of
2 all. A person who joins with another to commit an unlawful act
3 is criminally responsible for everything done by the other person
4 that is a natural and probable consequence of the acts done in
5 carrying out that common plan and purpose. Each one of these
6 defendants had a common plan and a purpose. They were all acting
7 together. Each one of these defendants brought a fully loaded
8 handgun for a reason.

9 It doesn't matter one bit which two of these defendants of
10 the four fired their gun. I didn't pull the trigger; my buddy
11 did. That is no defense when you're committing violent crimes.

12 Each defendant played a vital role in this. Once J.B. was
13 taken out of the picture, two defendants went after Marcus; two
14 defendants went after David. They were all acting together.
15 Whether they are the ones who actually pulled the trigger is
16 completely irrelevant. They are guilty of murder.

17 And what do you think, what do you think Devonte Major and
18 Elijah Green are going to say when they're in front of another
19 jury on another day? State can't prove I pulled the trigger; I
20 must be not guilty, too. That is not how the law works. All
21 four acting together, all four are guilty.

22 I want to talk to you about reasonable doubt quickly. A lot
23 of times you're going to hear lawyers, defense attorneys and
24 prosecutors, they'll come up here and they'll have cute and
25 little clever metaphors and analogies to describe reasonable

1 doubt to you. More often than not they're slanted to their
2 point, right. If it's a prosecutor, it's going to be a metaphor
3 or analogy that works for them. If it's a defense attorney, it's
4 going to be metaphor or analogy that works for them. That's not
5 the law.

6 Judge Goodstein is going to instruct you something like,
7 Proof beyond a reasonable doubt, it is the proof that leaves you
8 firmly convinced of the defendant's guilt. The law does not
9 require proof that overcomes every possible doubt. There are few
10 things in life that we know to an absolute certainty. The law
11 does not require that you know beyond all doubt in order to
12 convict. It's just reasonable doubt.

13 And the Judge is going to tell you about hesitation. I
14 think it might go something like, Reasonable doubt is the type of
15 doubt that would cause a person of ordinary firmness to hesitate
16 to act. I've heard defense attorneys argue in the past that, if
17 you get back there in that deliberation room and you hesitate,
18 well, then you've got to find him not guilty. There's a
19 difference between hesitation and deliberation. When you get
20 back there, deliberate, talk about it, go through the evidence.
21 That's deliberation; that is not hesitation.

22 And I'll end it with this. When we try murder cases and
23 when you're deliberating, jurors, it is perfectly acceptable for
24 you to have sympathy. Perfectly acceptable. You can have
25 sympathy for J.B. And you may even have sympathy for either one

1 of these defendants. But whether you have sympathy for any of
2 these parties or not should have no bearing on your decision.
3 When you go back to that deliberation room, you check your
4 sympathy at the door.

5 You know who has the authority and discretion to have
6 sympathy? Judge Goodstein. If you decide to convict them, she
7 can take sympathy into account, not y'all.

8 You have all taken an oath that you are going to apply the
9 facts of the case to the law. And when you do that, there's only
10 one just verdict in the case, and that's guilty, guilty for both
11 of these defendants on all counts. Thank you.

12 THE COURT: Thank you, Mr. Osborne. Ms. Hubrich.

13 CLOSING ON BEHALF OF THE DEFENDANT FORTUNE

14 ATTORNEY HUBRICH: Thank you, Judge. May it please the
15 Court.

16 THE COURT: Yes, ma'am.

17 ATTORNEY HUBRICH: That was a lot of accusations. The state
18 at one point said, I'm going to get up here with a cute and
19 clever metaphor or analogy. Not. I think at one point he said I
20 had a desperation defense. I don't. I think he said smoking
21 mirror, I'm trying to confuse you. I'm not.

22 I want to break it down from what I see. You can agree with
23 me, or don't you have to. You see, the crux of this case is
24 exactly how the state started. It's about a timeline. Exactly
25 how they started their closing argument. They gave you a

1 timeline, 12:03, 12:07, 7 minutes, 8 minutes. And that's the
2 crux of the case, that's the crux of their case. They want you
3 to convict a young man of murder. They want you to convict a
4 young man of murder based on the timeline.

5 They say the crime happened at 12:03, these guys hit the
6 back fence, then 12:07 they pulled over and they're all in a car,
7 there's four black males in a car with guns that were thrown out
8 the window and, therefore, you have to convict them. That's a
9 timeline. That's what they want, they want you to say, This is
10 the timeline, and here's the conviction.

11 But what do you have to do to believe the timeline? You
12 have to believe that Marcus Porter and David Swibaker were
13 telling you the truth. Right? You have to believe them in order
14 to believe the timeline in order to convict Muanah Fortune. So
15 that's what they want you to hang your hat on to send them to
16 prison, the timeline.

17 So I want to talk to you about what you have to believe in
18 order to believe that timeline. You have to believe that 911 was
19 called immediately. You have to. Because that's all they can
20 give you. We don't know when the crime actually happened.
21 That's what the police officer told you. But all we can testify
22 to is when 911 was called. That's where the timeline starts;
23 right?

24 So if 911 wasn't called immediately, well then maybe Muanah
25 Fortune was telling the truth in the beginning. If they didn't

1 call 911 immediately, then that timeline doesn't add up. Right?
2 Is that a reasonable doubt? I have no clever analogy, I have no
3 metaphor for you. I'm just asking you, is that reasonable doubt?

4 Let's talk about whether or not you believe the only two
5 witnesses we have in this case, Marcus Porter and David Swibaker.
6 Marcus Porter got on the witness stand and he lied to. I'm not
7 making that up. He lied to you. Marcus Porter got on the
8 witness stand and he told you, for the very first time, they
9 reached in the pocket of Joe Weaver and they stole his wallet.
10 It was the very first time the state heard it; it was the first
11 time I heard it; it was the first time Detective Davis heard it;
12 it was the first time anyone's heard that.

13 We know why that's important. Marcus Porter knew why that
14 was important. There's a reason why he made that up on the
15 witness stand. There's a reason why, when I crossed him about
16 it, he reverted to, I don't know, I can't remember.

17 Why did he claim to be a small-time drug dealer? Why, why
18 would he do that, why would he lie about it? It's a lie. Let's
19 just be honest about what it was, it was a lie. I'm a small-time
20 drug dealer.

21 The man is charged with trafficking. Trafficking is a
22 violent crime that carries serious time and serious weight. Why
23 would he lie? He lied. The man said, I'm a small-time drug
24 dealer. Did you hear what they got from his house when they
25 searched it? Seven digital scales. Who needs seven digital

1 scales? Who, a small-time drug dealer? How much weight is he
2 moving?

3 I think it was seven cellphones. And I want to talk about
4 the cellphones. Why in the world would he go across the street
5 to call 911? Did you question that? The man had seven
6 cellphones in his house, including one in his purse. What is
7 that all about? So we have seven cellphones, seven digital
8 scales, we've got marijuana, we've got baggies that are
9 consistent with the packaging of illegal drugs, and yet he got up
10 on the witness stand and he told you, I'm just a small-time drug
11 dealer.

12 And the state wants you to believe that that's not a lie,
13 that he didn't sit in this courtroom and lie to you, lie to me,
14 lie to the state over and over and over again. And so when we
15 get into it and he says, Oh, I didn't tell them about the prior
16 burglary, you know, we were robbed ten days prior, I didn't tell
17 them about it.

18 Somehow we want to put all of our credibility in this man?
19 He's a liar. He lied to you; he lied to the state; he lied to
20 the police officers. How can we rely on anything he said? How
21 can we put stock on anything he said?

22 And then we had David Swibaker. Apparently I'm malicious or
23 disgraceful for questioning him on the witness stand. He claims
24 he had no idea. I'm not making this up, you heard it. He got on
25 the witness stand, during direct testimony, right there, he swore

1 to tell the truth, the whole truth and nothing but the truth, and
2 he said to you, I had no idea that Marcus Porter was selling
3 drugs.

4 I got up 30 minutes later. My very first question, You
5 testified that you had no idea Marcus Porter was selling drugs?
6 Yes. But you knew Jaquavious Washington? Yes. You worked with
7 him? Yes. And you introduced Marcus to Jaquavious Washington?
8 Yes. And then I said, You introduced Jaquavious Washington to
9 Marcus Porter so that Marcus Porter could sell him drugs? Yes.

10 What is that if it's not a lie? Thirty minutes ago you just
11 said, I didn't know he was a drug dealer. Thirty minutes later
12 you're up on the witness stand saying, Well, I actually
13 introduced people to him so he could sell the drugs. That's a
14 lie. It's a lie in this courtroom, to you, when he testified.

15 He also said for the very first time, Two of the
16 perpetrators came in, hit me in the head with a gun, and told me
17 they would blow my brains out. Wow. If that happens to me, I am
18 running to the police and telling them. Check out my head, look
19 at this evidence. Charge these people with assault. Did he ever
20 tell Detective Davis this, ever? Detective Davis got up there
21 and said, I never heard it. You know the first time he heard
22 that? When David Swibaker testified in this trial. It was a
23 lie. It was a lie. Because that's not something you keep from
24 the police, it just isn't.

25 And for them to ask you to convict a young man of murder and

1 send him to prison for the rest of his life based on that is
2 what's really disgraceful.

3 So if we have to believe their story in order to believe the
4 timeline, the timeline, the timeline, the timeline. 12:03, 12:03
5 is when this happened. 12:03 is when he called 911.

6 Can I use ELMO, please, Tonda.

7 CLERK OF COURT: Yes, ma'am.

8 ATTORNEY HUBRICH: I want to talk about the crime scene. I
9 want to talk about this couch. The crime scene said didn't look
10 like that when they got there, it was actually flipped over. I
11 want to talk about what was found right here. It's a better
12 picture of it. That's a projectile, a fancy word for a bullet.
13 A bullet comes out of a gun, the projectile from a gun.

14 And I asked the crime scene guy, How would that have gotten
15 there underneath a flipped-over couch, under a blanket and under
16 a pillow? And he said, I don't know.

17 I mean, Marcus Porter told that you these guys came in, two
18 shots to the dog; the dog goes to the room; and he crawls up on
19 the bed and he dies. That's what he told you, he crawled up on
20 the bed and he died. And then he says, They started flipping the
21 mattresses, they flipped out; they flipped over couches, they
22 flipped over; they tossed the whole house.

23 And then as they're going out the door, it's a melee
24 shooting, everybody's shooting, shooting everywhere. How did
25 that projectile get that under couch after they flipped it? It

1 didn't. Let's face it, it didn't, it didn't get under the couch
2 after they flipped it.

3 Who do you think flipped the couch? Why would they flip the
4 couch? What were they hiding? How long did it take them to
5 clean their house of drugs, all of the drugs? How long did it
6 take them to set this up before they called 911?

7 This is the picture of the dog on the bed. Marcus Porter
8 told you it was the first thing that happened, right. They shot
9 the dog and he went in the bedroom and he climbed up on the bed
10 and he died on the mattress. And Marcus Porter was pretty
11 descriptive about it. He said, I walked in there, and my dog's
12 dying on the bed. And then he says they started flipping
13 mattresses over.

14 How does that work? How does that box spring get flipped
15 like that without the dog leaving the top of the bed? How does
16 this work? It doesn't work; right? I kept asking about it, How
17 is this possible?, I kept asking, I asked crime scene, How does
18 that work without moving the dog? It doesn't.

19 Well, what happened? Well, what happened was they needed to
20 cover some stuff up; they need to move their weight; they need to
21 get rid of the drugs; they needed to fix it; they needed to fix
22 what they had done. And then once they did that, they called
23 911.

24 How much do you trust that timeline now? Is it enough to
25 send a young man to prison?

1 There are no other witnesses. We want to talk about the
2 woman that called 911. She only called 911 because he showed up
3 at her door and knocked on it and said, Please call 911. Why, I
4 don't know. He had a cellphone, he had seven cellphones. Why he
5 went to her, I don't know.

6 He left David Swibaker back in the house to finish cleaning
7 up. The state wants to tell you that David Swibaker was just
8 trying to resuscitate J.B. But he got on the witness stand and
9 he told you, I think he told Ms. Cornwell on cross, he said, No,
10 I was smoking a cigarette and I was on the phone. He said it on
11 the witness stand, that that's what he was doing. I'm not trying
12 to paint a picture; I'm just telling you what he said.

13 The funny thing about the truth is that it's always easy to
14 remember, it's usually the first story we tell. I told you that
15 almost a week ago, maybe over a week. I can't even remember at
16 this point.

17 So I want to talk to you about Muanah's interrogation. What
18 did you see when you watched it? What did I see? I saw a kid,
19 he's 21; he had no prior record; he was scared, he was confused;
20 he asked to call his mama. He kept giving promises, If you'd
21 just tell us what we want to hear, you can walk out of here. I
22 didn't make that up. He told him that. Detective Davis told
23 him, Help me help you walk out of here; help me help you erase
24 this. He wants you to think, Oh, well, you know, he should have
25 known that I didn't really mean that; he should have known that

1 all that meant was you're going to be on trial for your life
2 somewhere down the road.

3 Who did all the talking during this interrogation, just in
4 the clips you saw? Ninety-five percent of the words were spoken
5 by the police officers. Did you walk in the house? Did you go
6 to the room? Did you bring a gun? Did you have 9 millimeter or
7 was it the revolver? And Muanah just sat there completely
8 silent, hours, two hours, this kid did that.

9 Seven in the morning they're bringing him back to
10 interrogate him to try to get a confession. He's facing a life
11 sentence. They keep telling him, You're facing a life sentence;
12 you're throwing your life away; you're only 21; you've got no
13 prior record. Let me help you walk out of here, let me help you
14 erase this. He is crying, he's asking to call his mama, and yet
15 they continue. How is that a confession? How is it even
16 permissible?

17 So the question really is -- and I'm just going put it out
18 there, I'm going to talk about the elephant in the room -- why
19 would somebody confess to something they didn't do? I mean, we
20 know they gave them all the words, right; we know that he is just
21 regurgitating back what they're telling him. I had a 9
22 millimeter. I only saw two men, not three. I went right to the
23 room.

24 I mean, none of it's consistent with what the witnesses told
25 you. Witnesses say, Oh, these two guys, they just stood by the

1 back door. None of this confession is consistent with what the
2 witnesses said. But we're going to call it confession
3 nonetheless.

4 So how does a person confess to something they didn't do?
5 Well, I'll tell you how. They asked him about a mask and they
6 said, Were you wearing a mask? He said no. And they said, Are
7 you sure? He said no. And that's a problem because the
8 witnesses said all four people were wearing masks. Whether it
9 was hoodies, it's just that they were wearing masks,
10 balaclava-type masks pulled up over their face. The witnesses
11 were really clear about that. All four were wearing masks. It's
12 why we can't identify them.

13 And so when Muanah gets in there and they're trying to
14 coerce him to confess and he's telling them, I didn't have a
15 mask, I didn't wear a mask, and they're worried now. And so they
16 said, What about the hoodies; did you pull your hoodie up?,
17 because he's got a hoodie on, right. And he said, Yeah, I had my
18 hoodie up. They said, Did you pull it, did you pull it tight?
19 You just watched it during the closing. And he says, Yes, I
20 pulled it tight.

21 That's how you confess to something you didn't do. You
22 watched it happen. He confessed to something he couldn't have
23 done. The officer tried to say, Oh, well, maybe they took the
24 strings out at booking. That's actually in evidence. This is
25 item 195, this is Muanah's black sweatshirt. Open it. You don't

1 even have to do the hard work, it's already been opened. Take it
2 back there. Take a look at it and see if the strings are there.

3 How do you confess to something you didn't do because they
4 coerced you into it? And you saw it happen, you saw it happen
5 with this young man. You saw him confess to pulling the hoodie
6 tight around his face because he wanted to walk out that door and
7 go to his mama, who is dying.

8 And I want to talk to you about the gunshot residue because,
9 really, that's the only other thing we have here, right, the
10 gunshot residue. The state got up and they said, Well, we know
11 he was in the house because he had gunshot residue on him. And
12 that's just baloney, I mean, it's just baloney. That gunshot
13 residue person herself told you how unreliable that is. She said
14 all it is is contact. All you've got to do is have that shirt in
15 contact with that shirt or another substance, or a car seat, and
16 it rubs off. That's what she said.

17 And as she was testifying I was wondering, were you
18 thinking, because I was thinking, I wonder if I have gunshot
19 residue on me right now just from sitting in this chair. Was
20 there somebody out hunting last night, last week, last year --
21 because, remember, it doesn't go away, apparently, unless you
22 wash it -- who sat in this chair and then I sat there? Do I have
23 gunshot residue on me? So I mean, how reliable was that
24 testimony? They want you to hang your hat on that, that's what
25 they brought here today to convict a young man?

1 I want to say this to you again because it's so important.
2 I'm going to say -- they're going to say I'm throwing up smoke.
3 There is no DNA that puts Muanah Fortune in that house. There
4 are no fingerprints that puts Muanah Fortune in that house.
5 There is no shoe print that matches to him. There is no
6 eyewitness identification. There is no direct evidence that puts
7 him in the house.

8 The circumstance evidence that the Judge is going to tell
9 you, you have to look at more closely, is a timeline. And that's
10 it. That's it. How do you convict a young man based on that?
11 You don't.

12 And that's why we're asking to you find Muanah Fortune not
13 guilty. Thank you.

14 THE COURT: Thank you, Ms. Hubrich. Ms. Cornwell.

15 CLOSING ON BEHALF OF THE DEFENDANT SALAZAR

16 ATTORNEY CORNWELL: Thank you, Your Honor. May it please
17 the Court.

18 THE COURT: Yes.

19 ATTORNEY CORNWELL: The first time I spoke to you I talked
20 to you about jumping to conclusions. If you want to call that an
21 anecdote, fine. But that's what it is, asking you to innately
22 jump to conclusions, pass judgment based on what seems to be an
23 obvious answer. And in doing that, we don't consider the
24 possibilities of all answers. And, unfortunately when we jump to
25 conclusions and fail to consider other possibilities, we often

1 get things wrong and cause more harm than good. And that's what
2 law enforcement did in this case and, as a result, Polo Salazar
3 has been charged with crimes that he did not commit.

4 I told you that the state was going to have to prove their
5 case, each and every element of each and every crime, beyond a
6 reasonable doubt against Polo Salazar, and that they are going to
7 try to get you to render an unwarranted verdict based on these
8 assumptions that law enforcement made.

9 The state had to prove their case to you, and they had to do
10 it by putting witnesses on the stand. And when they put those
11 witnesses on the stand, first we hear from Officer Boehler. And
12 Officer Boehler, for whatever reason, did not want to admit that
13 David Swibaker told her two to three people, two to three people.

14 We talked about Marcus Porter. And Marcus Porter was
15 untruthful, we know that. Ms. Hubrich has pointed out various
16 ways he was untruthful to you. One of the other ways that you
17 know is, nowhere, in any part of Marcus Porter's statement to any
18 of the seven different law enforcement people that he's spoken to
19 over the course of the last two years, has he ever said anything
20 about camo. Yet all of a sudden last week for first time ever,
21 he said one of them might have been wearing camo. But he didn't
22 even really want to commit that because he knew we had things to
23 play back for him.

24 He couldn't remember 15 seconds' worth of his statement when
25 he looked at it, but all of a sudden, two years later, for the

1 first time, he remembers camo. And then he lied to you and said,
2 Well, yeah, I told law enforcement, told law enforcement. I
3 asked them several times, When did you tell law enforcement? I
4 told them; I told them.

5 But even Detective Davis had to get up on the stand and say
6 that's not true, he never said anything about camo. In fact, I
7 pushed a little more? What did he say, because you were trying
8 to get clothing. He never said anything about gloves. And then
9 he remembered maybe someone wearing shorts. But again, he never
10 said anything about camo until all of a sudden he gets in front
11 of a jury, and he realizes he needs to make his story fit a
12 little better, so he lies to you in hopes that you're going to
13 jump to these conclusions.

14 We talked about David Swibaker. He lied to you, as well.
15 He gave you the statement that, though I didn't know he was a
16 drug dealer but I brought someone to sell drugs to him. Then he
17 told you he never was in the house with Jaquavious Washington,
18 and we found out that that wasn't true.

19 So Marcus Porter's lied to you; David Swibaker's lied to
20 you. When you've got a known drug dealer in a known drug dealer
21 house, it's not super surprising that they're not going to be
22 completely forthcoming and completely truthful.

23 But law enforcement, on the other hand, should be completely
24 forthcoming and completely truthful, and they should do their due
25 diligence and they should check all the boxes and make sure that

1 they are arresting the right person, because there is a young
2 man's life on the line.

3 And, did they do that? No. Law enforcement got up here,
4 first Detective Boehler, and then you had other officers that,
5 for some reason, couldn't remember and had to be impeached with
6 their statements, had to be shown their bodycam footage. And it
7 was troubling me.

8 I was a prosecutor for about 10 years before I did this job,
9 and I was troubled, because I know how much of a responsibility
10 it is to sit in that chair and to try to prove people guilty
11 beyond a reasonable doubt. It as a high burden. And so it was
12 troubling to me that these officers were being so unforthcoming
13 with their investigation and with their follow-up investigation,
14 and with what they did or didn't do or why they did or didn't do
15 what they did or didn't do.

16 And then it all came together a couple hours ago. He
17 said -- and I don't even think he realized he said it or what he
18 meant to say, it took me a second, because, if you recall, I had
19 to stop what I was questioning and go back a second. Because
20 when I was asking about Jaquavious Washington and why they didn't
21 follow up and why they didn't do this, all of a sudden there was
22 a moment where he said, Because they said four black men, and we
23 had four black men. Case closed. Done. They don't need to look
24 any further.

25 And it angered me, because we've been going around and

1 around about this other gentleman, Jaquavious Washington. There
2 is nothing in this record, in this testimony, in this evidence
3 that ever shows that there are phone records that shows that Polo
4 Salazar ever knew Marcus Porter, ever knew David Swibaker, ever
5 knew J.B. Weaver. There is no evidence that he had ever been to
6 the house or had ever been to that house.

7 So what's the connection? Well, we find out that Elijah
8 Green, who has been identified over and over and over again, that
9 he has this connection to Jaquavious Washington. And then they
10 look at another phone and they find out Marcus Porter also has a
11 connection to Jaquavious Washington. And the only thing they
12 know Jaquavious Washington, who's also known as Q, prior to all
13 this is that Polo Salazar was with Jaquavious Washington earlier
14 that day, as was Muanah Fortune, as was Elijah Green and as was
15 Devonte Major.

16 And that, despite knowing that, it took them looking at
17 phone records, trying to make a connection. They're trying to
18 make sure, make sure they're going to tie up any loose ends.
19 What they didn't realize what they were doing in trying to tie up
20 those loose ends is they were going to pull on those strings and
21 their entire case was going to unravel, because we come to find
22 out that Jaquavious Washington has been to the house; that Marcus
23 Porter sells to Jaquavious Washington; that Jaquavious Washington
24 called Marcus Porter to find out if he had any drugs in the home.

25 We find out that Jaquavious Washington's phone places him in

1 the area around the time that they said this incident occurred.
2 We find out that Jaquavious Washington is in a car in that area.
3 And you start asking -- and they did get information that
4 Jaquavious Washington gave Polo Salazar the car that he was
5 driving. Not just gave him, he gave him the keys to the car.

6 OBJECTION DURING CLOSING

7 ATTORNEY OSBORNE: Objection, Your Honor. Facts not in
8 evidence.

9 ATTORNEY CORNWELL: It's testimony, Your Honor, that the
10 jury can --

11 THE COURT: You may proceed.

12 ATTORNEY CORNWELL: Thank you, Your Honor.

13 THE COURT: Ladies and gentlemen, you will be the finders of
14 the facts. You may proceed.

15 ATTORNEY CORNWELL: And yet despite having all that evidence
16 and knowing that the first time they met with Jaquavious
17 Washington was to tie up loose lends that he lied to them, now
18 they go back and they get even more evidence that places him at
19 the scene of that crime, that puts him inside that house, that
20 makes him the nexus between Marcus Porter and David Swibaker and
21 these four men.

22 But they don't want to explore that further because that's
23 going to mess up their theory of four black men and we already
24 have four black men in custody. That's going to open them up to
25 lawsuits, and so they would rather ignore that and push through

1 with what they had, and put these two gentlemen's lives on the
2 line without doing a full investigation. So they don't get a
3 buccal swab to compare for DNA; they don't get fingerprints; they
4 don't get lifts of the shoes to see if it matches the shoe print.

5 And the shoes are important in this case. You've seen
6 pictures of the shoes. Everybody keeps talking about these
7 shoes. Let me tell you about the one pair of shoes that nobody
8 said anything about, that's never described. It's a pair of
9 black-and-gold shoes. We've heard white shoes; we've heard
10 colorful shoes, with an orange checkmark on the back that are
11 blue, black and purple; we've heard red, white and blue. No
12 black and gold. But again, that doesn't fit the narrative.

13 You've heard that they got phone records for Green, Major,
14 Porter and Jaquavious Washington. Who didn't they get any phone
15 records for? Muanah Fortune and Polo Salazar. Why? Why not?
16 Why wouldn't you want to check that box, why wouldn't you want to
17 go that extra step? Well, because that might defeat their theory
18 of the investigation.

19 Detective Davis got on the stand and told you they have a
20 theory that Jaquavious Washington was actually at that house but
21 he just pointed it out to them and left. Does that make sense?
22 No. There is nothing in this case, nothing that the state has
23 shown that you, that ever puts Polo Salazar at that scene inside
24 that house. There is no description of him; there is no
25 eyewitness testimony; there is no DNA; there is no fingerprints;

1 there is no cellphone records.

2 What they have Polo Salazar on is he was driving the car
3 that they attempted to pull over and didn't stop. And then you
4 have to ask yourself, Well, why did he stop? If you look at the
5 video and remember, he's not driving erratically; he's following
6 traffic laws; he put his blinker on to signal when he's going to
7 turn and where he's going to turn. He sees law enforcement go
8 by. He doesn't try to jump off on a side road; he doesn't try to
9 hide, because he doesn't know anything is wrong. Nothing, to his
10 knowledge, has happened at this point.

11 And when the blue lights get behind him, he makes a right
12 and he actually starts going off the side of the road, and then
13 he pulls off and he drives about 30 miles an hour. You want to
14 know why? He's got two guys in the back, they're screaming at
15 him to drive, Don't stop, go, go, go. And he's saying, Why,
16 what's going on, what's happening?

17 And at that point he's scared, and so he drives. Should he
18 have stopped? Absolutely. I think looking back, he will tell
19 you the same thing. But he's a young, black man who's scared.
20 You've got two people in the car screaming at him. And he
21 drives.

22 And when he finally stops and he goes to get out, his
23 biggest fear of concern, because what's the first thing law
24 enforcement says to him? Do exactly what I say and you won't get
25 shot. Because, unfortunately, where we are in this country, and

1 at a time like this, we've seen how serious it can be for both
2 law enforcement and people that are being traffic stopped. Law
3 enforcement is scared to go up to that stop because of things
4 that happen. But at the same time you've also got young, black
5 men that are terrified of being pulled over by the police because
6 they don't know what's going to happen. And you've got people in
7 the back seat screaming at you. And the first thing that happens
8 when you get out of the car -- and it's confirmed -- Do what I
9 say and you won't get shot.

10 And that so they're giving him all the instructions, and at
11 one point they told him to lift his shirt with his left hand and
12 he goes to lift his shirt and they say, Lift it higher. And you
13 see him start to put his right hand down and then he gets real
14 scared again because he hasn't done anything and he doesn't know
15 what's going on. He's just in a car that his friends gave him.
16 And they gave him the keys, and now he's got people in the back
17 saying, Go, go, go.

18 You also see how scared Muanah Fortune is in that video,
19 because he's the next person that they call out. Two of them are
20 in the front seat. And he puts his hand out and they start
21 yelling at him to get out, get out. And he's so scared at that
22 point he has to tell them, I have my seat belt on. Because he
23 doesn't want to reach back in the car to undo his seat belt.
24 That doesn't sound like a cold-blooded killer to me.

25 And then we talk about all of the other things that we look

1 at in this case. What else wasn't followed up on? You've got a
2 shoe print. And they want to say, Oh, well, maybe it was a past
3 burglary. You've heard testimony over and over and over again
4 that door was securely shut and that door had to be forcibly
5 kicked in. David Swibaker tells law enforcement as soon as they
6 arrive, There's a footprint on the back of the door, go check for
7 a footprint. So there is. And, low and behold, that footprint
8 doesn't match any of the four people in that car. Uh-oh, maybe
9 we should research that more? No, we've got our four men; we've
10 got it; we don't need to follow up on that.

11 The solicitor talked to you about the mud prints in the back
12 of the house. He wants to show you the shoes had dirt and mud on
13 them. Apparently the only place you can get dirt and mud on
14 shoes is in that back yard. But even still, you didn't hear any
15 testimony about going and trying to take shoe impressions there,
16 because then they could match up some additional impressions.
17 Don't do that, they don't follow through with that.

18 You hear that there was surveillance cameras inside the
19 house that could really paint an accurate picture of what
20 happened if they were running. But even though they've known
21 Marcus Porter lied to him, We'll take your word; we aren't going
22 to do a search warrant; we're not going to do a search warrant on
23 the security camera to see if it actually was recording, if it
24 actually did catch something. They don't do that.

25 They continuously fail to follow up and tie up their loose

1 ends because they've got their four men. And they want you to
2 render an unwarranted verdict and jump to the same conclusions
3 that they have without asking any questions, and they want you to
4 be firmly convinced that these two young men knew what was
5 happening in that house and went there to do that to that, to
6 that house, with the intent to specifically commit a crime, and
7 that what happened within that crime, everything that's
8 happening, they're responsible for everything. That's not what
9 the law says.

10 They went into this hand of one, hand of all theory. The
11 hand of one, the hand of all, you have to knowingly participate
12 in the crime; you have to know that the crime is going to be
13 committed and that what happens within that crime is a natural
14 and probable cause thereof.

15 So the first thing you have to do is you have to put him at
16 the scene of the crime. And Polo Salazar is not there. There is
17 nothing that puts him there. Even if you believe that the state
18 has proven that he is one of the two men that Marcus Porter said
19 never left the back area, even if you want to believe that Polo
20 Salazar was one of two men that Marcus Porter said never came
21 past the kitchen, never identified, that can never be pointed out
22 by any of the victims, standing in the back door area, merely
23 present at the scene of the crime does not make you guilty of the
24 principal of any crime therein.

25 And the Judge is going to instruct you on mere presence, and

1 that she is going to tell you that mere presence and mere
2 association does not get you to a murder conviction, it does not
3 get you an attempted murder conviction; it doesn't get you a
4 burglary conviction.

5 Merely being at the scene where a crime has occurred is not
6 a crime. You have to aid, abet, conspire, plan on those actions
7 to happen. And there has been nothing in this record that has
8 ever said that Polo Salazar had any idea of what was going on in
9 that house or what was happening at that house.

10 So even if you believe that he was there, which there is
11 nothing to prove that, there is absolutely nothing, even through
12 the testimony, that Polo Salazar did anything inside that house.
13 He didn't pull the trigger. He didn't steal anything. He didn't
14 go past the kitchen if you believe he was there. If you believe
15 he was there.

16 Because, again, my position is that Jaquavious Washington
17 was there. Jaquavious Washington didn't just drive by and point
18 out the house and say, Go there, guys. No. Law enforcement
19 knows Jaquavious Washington was there. Law enforcement knows
20 Jaquavious Washington was inside that house. They have phone
21 records, they have his statement, they have the nexus between him
22 and Marcus Porter, they have nexus to between him with David
23 Swibaker. They know that. But he was not in the car when they
24 pulled him over, so he's not one of their four guys.

25 Instead, they're going to make Polo Salazar, they're going

1 to put his life on the line, just so they don't have to admit
2 their mistakes.

3 Proof beyond a reasonable doubt. In the beginning I told
4 about when it comes to proof beyond a reasonable doubt that you
5 must be firmly convinced, and that a reasonable doubt is a kind
6 of doubt that would cause a reasonable person to hesitate to act,
7 one of those things that make you go, Uhm. I just don't know,
8 uhm. There's a lot of that in this case. Why didn't they get
9 phone records, uhm, of Polo Salazar? Why didn't they get a swab
10 from Jaquavious Washington? Uhm. Why didn't they get shoe
11 prints? Why does the evidence inside the house not really make
12 sense as to how it occurred, why are there mattresses flipped and
13 couches flipped overtop of evidence that really wouldn't have
14 been flipped or how that evidence got beneath it?

15 And, oh, yeah, let's make it out that this is some
16 preplanned plan/scheme where they're going to go in and rob and
17 potentially kill people to find drugs, to steal drugs, to take
18 drugs to the point that they're going to flip mattresses and
19 they're going to flip over couches and they're going to ransack
20 the house.

21 Except, as you heard Detective Brooks say, stuff in the
22 drawers were neat, it was all neat, everything in the closet is
23 neat. When they go into a further search, you open the top
24 drawer of the nightstand next to the bed that they apparently
25 flipped the mattress on, the drugs are right there on top.

1 They're coming here to steal things, yet there are seven phones
2 in the house, there is an iPad, there's an Acer Chrome Book,
3 there's all kinds of valuables in the house, they're going to
4 come and rob drugs and valuables, yet they don't take the drugs
5 and valuables? They're going to ransack and rummage the house,
6 except for all the drawers are neatly done?

7 The rooms that would be more suspicious, the ones that had
8 the deadbolts and locks on aren't undamaged and haven't been
9 plundered through.

10 The stuff that they apparently came to get is sitting right
11 on top, out in the open.

12 It doesn't make sense because law enforcement cannot tell
13 you what happened in that house. They want you to believe what
14 they assumed to be the right answer in that Marcus Porter and
15 David Swibaker were being truthful; the four guys were found in a
16 car; there were four guys, they had their people, hands down,
17 let's go home.

18 But it's not that simple, and the law doesn't allow you to
19 think that it's that simple. And if you have a reasonable doubt,
20 if there are any of those things that make you go, Uhm, you must
21 find Polo Salazar not guilty.

22 And when you're looking at that and you're considering a
23 conviction for murder, for attempted murder, for killing a dog,
24 for burglary, are you firmly convinced that Polo Salazar was
25 there? Are you firmly convinced that he actively participated?

1 Or do you have a reasonable doubt?

2 When you come to the stolen car, are you firmly convinced
3 that he knew that car was stolen? You've got the keys. It's
4 dark. How many times, when someone hands you the keys to your
5 car or the keys to their car to drive at night, do you go and
6 look at the back to see if there's a license plate? Especially
7 if you come out the front door and walk around the front of the
8 car. There is nothing in this reported that ever suggests that
9 he knew or should have known that that car was stolen.

10 You heard testimony that it was stolen in Walterboro. Polo
11 Salazar, they made it clear to you that he's from Beaufort, and
12 this happened in Summerville. So at what point, where would he
13 know or how could he know or why should he have known that a car
14 was stolen from Walterboro? He's at a friend's house. Friend
15 tosses him keys to the car and he says, Here, you can take my
16 car. Why would anybody think that they're being given a stolen
17 car?

18 There is no evidence, there is no testimony, on any of the
19 evidence that prove Polo Salazar is guilty of any of the crimes
20 he's charged with, even the most minute.

21 And the state wanted to bring out, Well, he could have been
22 charged with all these other crimes. He wasn't. Why? Because
23 they know they can't make a mistake, and that they're a ball of
24 assumptions, conclusions that they jump to. It's just
25 unraveling. And the more they start to pile on, the faster that

1 ball's going to unravel. Because unfortunately, for them, there
2 are other people, people like yourself, that will consider all of
3 the possibilities and not just jump to that instant conclusion
4 and not make an assumption without having all the facts and
5 circumstances of a situation before rendering judgment.

6 And now that you've had the opportunity to see what the
7 state has presented to you, if there is any question in your
8 mind, then you must find Polo Salazar not guilty. Thank you.

9 THE COURT: Thank you, Ms. Cornwell. Ladies and gentlemen,
10 the first little, short break. Just stand up where you are.
11 Seriously, just see how that feels.

12 Now, do any of my jurors, before I deliver the charge, or
13 the instruction, to you, do any of you need to take a break?
14 Because it's going to take me -- okay, very well, very well.
15 Ladies and gentlemen, this is how we're going to be proceeding.
16 Of, course you're going to step to your jury room. Do not
17 discuss this matter; do not allow anyone to discuss it with you.
18 You have not heard my charge on the law. You are not prepared to
19 deliberate.

20 But when all of you have taken your comfort break and you
21 are ready to return, I just want you to knock on the door because
22 we will be awaiting you. So just knock on the door so you can
23 come on back in. When you return, I will deliver the charge to
24 you. So if you'll step to your jury room. Remember, do not
25 discuss this matter or allow anyone to discuss it with you.

1 (WHEREUPON, the jury is escorted out of the courtroom at
2 3:59 p.m.)

3 THE COURT: Anything before we take our short break? Y'all
4 can step away for just a few moments. But I do want to begin
5 once the jury's ready to begin.

6 (WHEREUPON, court recessed at 4:00 p.m. and reconvened at
7 4:11: p.m.)

8 (WHEREUPON, the jury is seated in the courtroom at
9 4:15 p.m.)

10 CHARGE OF THE COURT

11 THE COURT: Madam presiding juror, and ladies and gentlemen,
12 the indictments in this case charge the defendants, Mr. Fortune
13 and Mr. Salazar, with murder, attempted murder, burglary in the
14 first degree, possession of a weapon during the commission of a
15 violent crime, ill-treatment of animals.

16 Additionally, Mr. Salazar is charged with possession of a
17 stolen vehicle where the value is more than \$2,000 but less than
18 \$10,000.

19 Ladies and gentlemen, I remind you that the fact that these
20 two people were arrested, charged and indicted in this case is
21 not evidence in this case and it cannot be considered by you as
22 evidence of guilt in this case, nor does it create any
23 presumption or inference of guilt.

24 Ladies and gentlemen, the indictments in this case are
25 simply the formal written instrument which contain the charges

1 made against these individuals. You may also hear me refer to
2 them as the defendants. These are the formal documents by which
3 this case is brought into this court.

4 Ladies and gentlemen, each of these indictments charge a
5 separate and distinct offense, or crime. You must decide each
6 indictment separately on the evidence and the law applicable to
7 it, uninfluenced by your decision as to any other indictment.

8 Each of these defendants may be convicted or acquitted,
9 meaning may be found guilty or not guilty, on any or all of the
10 offenses of the crimes charged. You will be asked to write a
11 separate verdict of guilty or not guilty for each defendant and
12 for each indictment.

13 Ladies and gentlemen, I instruct you that there are multiple
14 defendants in this case. Each is charged with murder, attempted
15 murder, burglary in the first degree, possession of a weapon
16 during a violent crime, and ill-treatment of animals, torture.
17 In addition, Mr. Salazar is charged with possession of a stolen
18 vehicle.

19 Each defendant, and the evidence and the law concerning that
20 defendant, should be considered separately and individually.
21 Your verdict does not have to be the same for both defendants.
22 The fact that you may find one defendant guilty or not guilty
23 regarding an indictment should not control your verdict as to the
24 other defendant.

25 Where more than one person is charged with a crime, if the

1 evidence warrants it, you may convict one and acquit the other,
2 or you may acquit both, or you may convict both. It will depend
3 upon your view of the testimony and evidence. You must take each
4 defendant and each indictment concerning him, consider the
5 evidence to that defendant and my instructions to you on the law.
6 You will then write a separate verdict of guilty or not guilty
7 for each individual defendant, for each indictment
8 concerning/charging him.

9 Now, ladies and gentlemen, I am going to -- I did as we
10 began, now I'm going to -- review the indictments with you.
11 Ladies and gentlemen, I remind you that I'm going to, as I did
12 before for judicial economy, I will go over the allegations. But
13 there are separate indictments for each of these defendants, and
14 you will certainly consider them separately and independently.
15 But, for judicial economy, I am going to, as I go over the
16 indictments, I will go over the charges that they have, the same
17 charges, at that time.

18 All right. Ladies and gentlemen, Indictment 2019-GS-18-0416
19 and 0437 charge each of these defendants with murder. The
20 indictments allege as follows: That in Dorchester County, South
21 Carolina, on or about January the 28th, 2019, with malice
22 aforethought, the Defendant Muanah Aruna Fortune, Jr., and the
23 Defendant Polo Keoki Salazar did kill one Joe Weaver by means of
24 shooting the victim. The victim did die as a proximate, in other
25 words, a proximate is direct, his approximate result thereof,

1 this offense being in violation of the common law and Section
2 16-3-10 of the South Carolina Code of Laws, as amended.

3 Ladies and gentlemen, Indictment 2019-GS-18-0417 and
4 Indictment 2019-GS-0440 allege -- let me say, these are the
5 indictments for attempted murder. They allege that in Dorchester
6 County, South Carolina, on or about January the 28th, 2019, the
7 Defendant Polo Keoki Salazar and the Defendant Muanah Aruna
8 Fortune, Jr., did, with the intent to kill, attempt to kill one
9 Marcus Porter, with malice aforethought, by shooting the victim,
10 this offense being in violation of Section 16-3-29 of the South
11 Carolina Code of Laws, as amended.

12 Ladies and gentlemen, Indictment 2019-GS-18-0418 and 0438
13 allege that in Dorchester County, South Carolina, on or about
14 January the 28th, 2019, the Defendant Muanah Aruna Fortune, Jr.,
15 and the Defendant Polo Keoki Salazar did willfully and unlawfully
16 enter the dwelling of Marcus Porter without consent and with the
17 intent to commit a crime therein, and when, in effecting entry or
18 while in the dwelling or in immediate flight, the defendant or
19 another participant in the crime is armed with a deadly weapon or
20 explosive, causes physical injury to a person who is not a
21 participant in the crime, uses or threatens to use the use of a
22 dangerous instrument, displays what is or appears to be a knife,
23 a pistol, a revolver, a rifle, a shotgun, a machine gun or other
24 firearm and/or the entering or remaining occurs in the nighttime,
25 this offense being in violation of Section 16-11-311 of the South

1 Carolina Code of Laws, as amended.

2 And Indictment 2019-GS-18-0420 and 0441 allege that in
3 Dorchester County, South Carolina, on or about January the 28th,
4 2019, the Defendant Polo Keoki Salazar and the Defendant Muanah
5 Aruna Fortune, Jr., did visibly display or had in his possession
6 a handgun during the commission of a violent crime, as defined by
7 Section 16-1-60 of the code of laws of South Carolina, 1976, as
8 amended; to wit, burglary in the first degree and murder, thereby
9 violating Section 16-23-490 of the Code of Laws of South
10 Carolina, 1976, as amended.

11 And Indictment 2019-GS-18-0421 and 0443 allege that in
12 Dorchester County, South Carolina, on or about January the 28th,
13 2019, the Defendant Polo Keoki Salazar and the Defendant Muanah
14 Aruna Fortune, Jr., did torture, torment, needlessly mutilate,
15 cruelly kill or inflict excessive or repeated, unnecessary pain
16 or suffering upon an animal, or by the omission or commission did
17 cause the acts to be done in that the defendant did cruelly kill
18 a dog by shooting it, this offense being in violation of Section
19 47-1-40(b) of the South Carolina Code of Laws, as amended.

20 And, ladies and gentlemen, with regards to Indictment
21 2019-GS-18-0439, this indictment alleges that in Dorchester
22 County, South Carolina, on or about January the 28th, 2019, the
23 Defendant Polo Keoki Salazar did knowingly and unlawfully
24 possess, receive, conceal, sell or dispose of a vehicle described
25 as a 2007 Honda CR-V with an approximate value of \$6,000, and the

1 defendant was not entitled to possession of the vehicle and had
2 knowledge that the vehicle had been stolen or converted
3 unlawfully, this offense in violation of Section 16-21-80 of the
4 South Carolina Code of Laws, as amended. This indictment is
5 against Mr. Salazar only.

6 To each and every indictment and to each allegation in those
7 indictments, these defendants, each of them, have pled not
8 guilty.

9 Now, ladies and gentlemen, the plea of not guilty puts the
10 burden on the state to prove guilt beyond a reasonable doubt. A
11 person charged with committing a criminal offense in South
12 Carolina is never required to prove himself or herself not
13 guilty, no matter the seriousness of the crime.

14 A person charged with a crime in the state of South Carolina
15 will always be presumed to be innocent of the crime for which the
16 indictment or the indictments were issued unless guilt has been
17 proven by evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 Ladies and gentlemen, this presumption of innocence does not
20 end when you begin your deliberations but it accompanies each of
21 these defendants throughout the trial until you should reach,
22 should you reach, a verdict of guilt based on evidence satisfying
23 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 the defendant's guilt beyond a reasonable doubt.
3 You do this analysis for each of these defendants separately and
4 independently.

5 Ladies and gentlemen, the state has the burden of proving
6 each of these defendants guilty beyond a reasonable doubt. Some
7 of you may have served as jurors on civil cases where you were
8 told that it is only necessary to prove that a fact is more
9 likely true than not true such as by the greater weight, or the
10 preponderance of the evidence. Ladies and gentlemen, in criminal
11 cases the state's proof must be more powerful than that. It must
12 be beyond a reasonable doubt.

13 A reasonable doubt, ladies and gentlemen, is the kind of
14 doubt that would cause a reasonable person to hesitate to act.
15 Proof beyond a reasonable doubt is proof that leaves you firmly
16 convinced of a defendant's guilt. There are very few things in
17 this world that we know with absolute certainty. And, in
18 criminal cases, the law does not require proof that overcomes
19 every possible doubt.

20 If, based on your consideration of the evidence, you are
21 firmly convinced that the defendant that you are considering is
22 guilty of the crime that you are considering, you must find the
23 defendant guilty.

24 If, on the other hand, you think there's a real possibility
25 that the defendant is not guilty, you must give the defendant the

1 benefit of the doubt and find him not guilty. You perform this
2 task for each defendant and each indictment charged against him,
3 separately and independently.

4 Now, ladies and gentlemen, I remind you that you and I have
5 certain duties to perform. As the trial judge, it is my
6 responsibility to preside over the trial of this case. I also
7 have the duty to rule on the admissibility of the evidence
8 offered during the trial. You are to consider only the competent
9 evidence before you.

10 If there was any testimony ordered stricken from the record
11 in this case during the trial, you must disregard that testimony.
12 You are to consider only the sworn testimony in this case and any
13 exhibits which have been made a part of the record in this case.

14 Ladies and gentlemen, I have the additional duty to charge
15 you regarding the law applicable to this case. As the presiding
16 judge, I am the sole judge of the law of this case, and it is
17 your duty, as jurors, to accept and to apply the law as I now
18 state it to you.

19 If you already have any idea as to what the law is or what
20 the law ought to be and it does not agree with what I now tell
21 you the law is, you must abandon that idea because you are sworn
22 to accept the law and apply the law exactly as I state it to you.

23 In every case tried in this court before a jury the jury
24 becomes the sole and exclusive judge of the facts in a case. A
25 trial judge cannot intimate, state, comment on or make any

1 statement to a trial jury about the facts in the case since you,
2 the jury, are the sole judge of the facts in this case. You are
3 not to infer from what I have said during the progress of this
4 trial in ruling upon the admissibility of evidence or otherwise
5 for anything that I say now during the course of this instruction
6 to you that I had any opinion about facts in this case. I have
7 no opinion regarding these facts. The law does not allow me to
8 have an opinion about the facts in this case. This is a matter
9 solely for you, the jury, to determine.

10 As jurors, it is your duty to determine the effect, the
11 value, the weight and the believability of the evidence presented
12 during this trial.

13 Now, ladies and gentlemen, I instruct you that there are two
14 types of evidence which are generally presented during the trial,
15 one, direct evidence; the other, circumstantial evidence.

16 Direct evidence proves the existence of a fact, and it does
17 not require deduction. Circumstantial evidence is proof of a
18 chain of facts and circumstances indicating the existence of a
19 fact. Crimes may be proven by circumstantial evidence or direct
20 evidence. The law makes no distinction between the weight or
21 value to be given to either direct or circumstantial evidence.

22 However, to the extent the state relies on circumstantial
23 evidence, all of the circumstances must be consistent with each
24 other and, when taken together, point conclusively to the guilt
25 of the accused that you are considering beyond a reasonable

1 doubt.

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

8 You should weigh all the evidence in the case and, after
9 weighing all the evidence in the case, if you are not convinced
10 of the guilt of the defendant on the particular indictment that
11 you are considering for each of these individuals beyond a
12 reasonable doubt you must find that defendant not guilty. You do
13 this analysis independently and separately with regards to each
14 of these defendants and with regards to each of these
15 indictments, separately and independently.

16 Now, necessarily you must determine the credibility of the
17 witnesses who have testified in this case. Credibility simply
18 means believability. It becomes your duty as jurors to analyze
19 and to evaluate the evidence and to determine which evidence
20 convinces you of its believability.

21 In determining the believability of witnesses who have
22 testified in this case, you may believe one witness over several
23 witnesses, or several witnesses over one witness. You may
24 believe a part of the testimony of a witness and reject the
25 remaining part of the testimony of that same witness. You may

1 believe the testimony of a witness in its entirety or you may
2 reject the testimony of a witness in its entirety. You may
3 consider whether any witness has exhibited to you any interest,
4 bias, prejudice or other motive in this case.

5 You may also consider the appearance and the manner of the
6 witness while testifying.

7 Now, ladies and gentlemen, our rules of evidence ordinarily
8 do not permit witnesses to testify regarding their opinions or
9 conclusions. However, an exemption to this rule exists for
10 witnesses we call expert witnesses. That is a witness who, by
11 education and experience, has become an expert in some art,
12 science, profession or calling, and they state an opinion as to
13 relevant and material matter in which the witness claims to be an
14 expert, and they also state the reasons for the opinion.

15 You should consider any expert opinion received in evidence
16 in this case and, like any other evidence, give it the weight you
17 think it deserves. If you decide that the opinion of an expert
18 witness is not based on sufficient education and experience, or
19 if you conclude that the reasons given in support of the opinion
20 are not sound, or that the opinion is outweighed by other
21 evidence, you may disregard the opinion entirely.

22 An expert witness's testimony is to be given no greater
23 weight than that of other witnesses simply because the witness is
24 an expert. And further, you are not required to accept an expert
25 witness's opinion even though it is not contradicted.

1 Now, ladies and gentlemen, I instruct you and I emphasize
2 that the fact that the defendants did not testify is not a factor
3 to be considered by you in any way in your deliberation or in
4 your consideration on the question of whether each of these
5 defendants is guilty or not guilty.

6 Ladies and gentlemen, the fact that the defendants, each of
7 them, the fact they did not testify must not be considered by you
8 in any manner whatsoever. A defendant has the constitutional
9 right to remain silent, and the assertion of this right must not
10 be considered by you in your deliberations.

11 I repeat, under your oath you are to draw no conclusion
12 whatsoever from the fact that the defendants in this case did not
13 testify. The fact that these defendants did not testify should
14 not even be discussed, should not be mentioned in your jury room.

15 The burden of proof, as I have stated to you, is on the
16 state. Neither of these defendants is required to prove himself
17 not guilty. The burden of proof is, and remains, on the state to
18 prove guilt beyond a reasonable doubt.

19 Now, ladies and gentlemen, I further charge you that if a
20 crime is committed by two or more people who are acting together
21 in committing a crime, the act of one is the act of all. A
22 person who joins with another to commit an unlawful act is
23 criminally responsible for everything done by the other person
24 which happens as a probable or a natural consequence of the acts
25 done in carrying out the common plan and purpose.

1 If two or more people are acting together, are together,
2 assisting each other in committing the offense, the act of one is
3 the act of all or, as it is sometimes said, the hand of one is
4 the hand of all.

5 Prior knowledge that a crime is going to be committed,
6 without more, is not sufficient to make a person guilty of that
7 crime. Mere knowledge that another person is going to commit a
8 crime, even if the defendant is present when the crime is
9 committed, is not sufficient to convict the defendant as a
10 principal.

11 Guilt, as a principal, is shown by actual or constructive
12 presence at the scene as a result of prior arrangement.
13 Therefore, a finding of a prior arranged plan or common scheme is
14 necessary for a finding of guilt as a principal. The state must
15 prove, beyond a reasonable doubt, by competent evidence the
16 theory of the hand of one is the hand of all.

17 Now, a principal in a crime is one who either actually
18 commits the crime or who is present, aiding, abetting or
19 assisting in the committing of the crime. When a person doesn't
20 act in the presence of and with the assistance of another, the
21 act is done by both.

22 Where two or more acting with a common plan or intent are
23 present at the commission of a crime, it does not matter who
24 actually commits the crime. All are guilty. The hand of one is
25 the hand of all. Present at the commission of a crime means to

1 be sufficiently near to aid and abet and assist in the commission
2 of the crime.

3 Ladies and gentlemen, I further charge you that mere
4 presence at the scene is not sufficient to prove someone guilty
5 of a crime. A defendant's presence where a crime is being
6 committed or mere association with a person who commits a crime
7 does not make a defendant an accomplice or an aider or an abettor
8 of the person committing the crime.

9 The burden's on the state to prove every element of the
10 crimes charged.

11 If you find, after reviewing all the evidence, that the
12 state has proved that the defendant was only present at the scene
13 of the crime, and that they have not proved beyond a reasonable
14 doubt any other participation in the crime that you are
15 considering -- and, of course, you'll do this for each crime
16 charged -- then you must find the defendant not guilty.

17 The law is that proof of the defendant at the scene of the
18 crime is not sufficient to find someone guilty. And that
19 concludes that charge.

20 Ladies and gentlemen, I'm now going to instruct you
21 regarding intent. Ladies and gentlemen, in order to establish
22 criminal liability, criminal intent is required. For example,
23 the mental state required to be proven by the state for a
24 particular crime might be purpose, intent, knowledge. And those
25 are simply examples.

1 Criminal intent must be proven by the state beyond a
2 reasonable doubt. Criminal intent is always a matter that must
3 be determined by the jury from the circumstances surrounding the
4 situation. There is no way to prove intent to a mathematical
5 certainty. There is no way that medical science can dissect a
6 person's brain and determine what the person had in mind. So the
7 law says that criminal intent may be inferred by the
8 circumstances shown to have existed. This is how you make a
9 determination of whether or not the element requiring intent was
10 present.

11 It is not necessary to establish intent by direct and
12 positive evidence, but intent may be established by inference in
13 the same way as any other fact, by taking into consideration the
14 acts of the parties and all the facts and circumstances of the
15 case. Criminal intent is a mental state, a conscious wrongdoing.

16 It is up to you to determine what the defendant -- and,
17 again, you do this analysis for each defendant with regard to
18 each alleged crime, each indictment.

19 It is up to you to determine what the defendant intended to
20 do based on the circumstances shown to have existed.

21 Criminal intent can arise from action or the failure to act,
22 and may arise from the difference or consequences that are
23 considered by the law to be the equivalent of criminal intent.
24 However, criminal intent must be proven by the state for each
25 defendant, for each indictment, each crime charged, beyond a

1 reasonable doubt.

2 Now, ladies and gentlemen, I'm now going to charge you
3 regarding the statements made by one of the defendants. A
4 statement alleged to have been made by the defendant,
5 Mr. Fortune, has been admitted into evidence in this case. While
6 the Court has determined that the statement is admissible, I
7 instruct you that you make the ultimate decision of whether or
8 not the defendant made the statement.

9 If the defendant did make the statement, you must determine
10 whether the statement was made by the defendant voluntarily and
11 of his own free will. This means that the statement was not
12 caused by pressure, force, fear, threats, coercion or
13 intimidation, or by hope or a promise of leniency or a reward of
14 any kind.

15 In determining whether the statement was voluntary, you
16 should consider both the characteristics of the defendant and the
17 details of the questioning. Some of the factors that you must
18 consider are the age of the defendant, the defendant's education
19 or lack of education, the defendant's mental ability or capacity,
20 the defendant's IQ, or intelligence, the defendant's background
21 and environment, the place and length of detention, the nature of
22 the questioning, and the advice or lack thereof to the defendant
23 of his constitutional rights including, but not limited to, the
24 right to remain silent, that any statement could be used against
25 him in a court of law, the right to have a lawyer present, that

1 if you cannot afford a lawyer a lawyer would be appointed to
2 represent him without any cost, and that he could stop making his
3 statement at any time. You must carefully consider all of the
4 surrounding circumstances before you give any weight to an
5 alleged statement.

6 The state has the burden of proving beyond a reasonable
7 doubt that the alleged statement was voluntary. If you determine
8 it was, you may give the statement any further consideration that
9 you deem proper. You must decide what weight, if any, should be
10 given to the alleged statement.

11 If you decide the alleged statement was not a free and
12 voluntary statement of the defendant, you should not consider the
13 statement at all.

14 Now, ladies and gentlemen, I am going to define for you
15 these offenses. I'm going to begin with murder. Ladies and
16 gentlemen, each of these defendants are charged with murder. The
17 state must prove beyond a reasonable doubt that the defendant
18 killed another person with malice aforethought.

19 Malice is hatred, ill will or hostility towards another
20 person. It is the intentional doing of a wrongful act without
21 just cause or excuse and with an intent to inflict an injury or,
22 under circumstances from which the law will infer, an evil
23 intent.

24 Malice aforethought does not require that malice exist for
25 any particular amount of time before the act is committed, but

1 malice must exist in the mind of the defendant just before and at
2 the time the act is committed. Therefore, there must be a
3 combination of the previous evil intent and the act. Malice
4 aforethought may be expressed or inferred. These terms,
5 expressed and inferred, do not mean different kinds of malice but
6 merely the manner in which malice may be shown to exist, that is
7 either by direct evidence or by inference from the facts and
8 circumstances which are proved.

9 Expressed malice is shown when a person speaks words which
10 express hatred or ill will for another, or when the person
11 prepared beforehand to do the act which was later accomplished.
12 For example, lying in wait for a person, or any other acts or
13 preparation going to show that the deed was within the
14 defendant's mind, would be expressed malice. Malice may be
15 inferred from conduct showing a total disregard for human life.

16 I'm now going to define for you the crime, or charge, of
17 attempted murder. Each of these defendants is charged with
18 attempted murder. In order to prove attempted murder, the state
19 must prove a defendant attempted to kill another person, with
20 malice aforethought.

21 Malice is hatred, ill will or hostility towards another
22 person. It is the intentional doing of a wrongful act without
23 just cause or excuse and with the intent to inflict an injury or,
24 under circumstances that the law will infer, illegal intent.
25 Malice aforethought does not require that malice exist for any

1 particular time before the act is committed, but malice must
2 exist in the mind of the defendant just before and at the time
3 that the act is committed. Therefore, there must be a
4 combination of the previous evil intent in the act.

5 Ladies and gentlemen, a specific intent to kill is an
6 element of attempted murder and must be proven by the state
7 beyond a reasonable doubt.

8 Now, ladies and gentlemen, each of these defendants is
9 charged with first-degree burglary. The state must prove first,
10 beyond a reasonable doubt, that the defendant entered a dwelling
11 without consent.

12 A dwelling is any building or portion of a building in which
13 a person ordinarily sleeps. A building constructed as a dwelling
14 that has never been occupied cannot be considered a dwelling for
15 the purposes of burglary, but a building is a dwelling, even if
16 the residents are temporarily absent from the building.

17 In order to prove that the defendant entered the dwelling,
18 the state does not have to prove that the defendant's entire body
19 entered the dwelling. The smallest entry is sufficient. It may
20 be any part of the body, such as a hand or foot, or even an
21 instrument such as a hook or other instrument. In addition, the
22 state does not have to prove that force was used to gain entry.
23 If a person enters a building by using deception, artifice, trick
24 or misrepresentation to get consent to enter, this is an entry
25 without consent.

1 Next, the law must prove beyond a reasonable doubt that the
2 defendant intended to commit a crime, either a felony or a
3 misdemeanor, at the time of the entry. The mere entry into a
4 dwelling without consent is not burglary. If the intent to
5 commit a crime is formed after the entry, it is not burglary.

6 On the other hand, if the defendant intended to commit a
7 crime at the time of the entry, it is burglary even if the intent
8 was abandoned after the entry. It does not matter that the
9 intended crime was not completed.

10 Intent may be shown by acts and conduct of the defendant and
11 other circumstances from which you may naturally and reasonably
12 infer intent.

13 Finally, the state must prove beyond a reasonable doubt
14 that, when entering, while in the dwelling, or when fleeing, the
15 defendant or an accomplice was armed with a deadly weapon or
16 explosive.

17 A deadly weapon is any article, instrument or substance
18 which is likely cause death or great bodily harm. Whether an
19 instrument has been used as a deadly weapon depends on the facts
20 and circumstances of each case. The following are examples, and
21 just examples, of instruments which may be deadly weapons. A
22 shotgun, a rifle, a dirk, a dagger, a knife, a sling slot, metal
23 knuckles, a razor, gasoline, a firebomb or a Molotove cocktail,
24 lighter fluid. A gun may be a deadly weapon even if it's not
25 operating.

1 When entering, while in the dwelling or when fleeing, the
2 defendant or accomplice displaying what was or appeared to be a
3 knife, a pistol, a revolver, rifle, shotgun, machine gun or other
4 firearm, the defendant entered or remained in the dwelling in the
5 nighttime.

6 Nighttime is the period between sunset and sunrise during
7 which there is not enough daylight to recognize a person's face
8 except by artificial light or moonlight.

9 Now, ladies and gentlemen, I'm now going to charge you
10 regarding the law applicable to possession of a weapon during the
11 commission of or attempt to commit a violent crime. Ladies and
12 gentlemen, each of these defendants are charged, or each is
13 charged, with possession of a weapon during the commission of or
14 attempt to commit a violent crime. The state must prove beyond a
15 reasonable doubt that a defendant was in possession of a firearm
16 or visibly displayed what appeared to be a firearm during the
17 commission of a violent crime.

18 A firearm means any machine gun, an automatic rifle or any
19 weapon which will or is designed to or may be readily converted
20 to expel a projectile.

21 In order to find the defendant, or any defendant, guilty of
22 possession of a weapon during the commission of a violent crime,
23 you must first find the defendant guilty of either committing a
24 violent crime or attempting to commit a violent crime. Murder,
25 attempted murder and burglary in the first degree are violent

1 crimes.

2 The state must prove beyond a reasonable doubt that the
3 weapon further advanced or helped in the commission of the crime.

4 Now, ladies and gentlemen, I'm now going to charge you with
5 regards to the law applicable to ill-treatment of animals in
6 general, torture, pursuant to 47-1-40.

7 Ladies and gentlemen, each of these defendants is charged
8 with ill-treatment of animals, in general, torture. The state
9 must prove beyond a reasonable doubt that the defendant -- and
10 you will do this analysis for each -- did torture, torment,
11 needlessly mutilate, cruelly kill or inflict unnecessary pain and
12 suffering to an animal. A defendant may be convicted of this
13 crime by commission, acting, or omission, not acting.

14 Now, ladies and gentlemen, Mr. Salazar is charged with
15 possessing, concealing, selling or disposing of a stolen vehicle
16 with a value more than two yet less than \$10,000 pursuant to
17 16-21-80. The Defendant Mr. Salazar is charged with possession
18 of a stolen vehicle.

19 The state must prove beyond a reasonable doubt that the
20 defendant knowingly and unlawfully possessed, received,
21 concealed, sold or disposed of a vehicle, and that the Defendant
22 Mr. Salazar was not entitled to possession of the vehicle and had
23 knowledge that the vehicle had been stolen. And the state must
24 also prove beyond a reasonable doubt that the vehicle was worth
25 more than \$2,000 yet less than \$10,000.

1 Now, ladies and gentlemen, in a moment I'm going to go over
2 with you the verdict form. But before I do that, I want to tell
3 you two things. Number one, your verdict as to each of these
4 indictments, as to each of these defendants, your verdict must be
5 unanimous. This is not the verdict of the majority of you. This
6 is not the verdict of any one of you. This verdict must be the
7 verdict of each and every one of you. It must be unanimous.

8 Now, ladies and gentlemen, there are two verdict forms. One
9 verdict form are for the charges against Mr. Fortune, and one
10 verdict form, the other verdict form, are for the charges against
11 Mr. Salazar.

12 Now, as to each charge, there are two possible verdicts.
13 And I have put the two possible verdicts for each of these
14 indictments, each of these crimes, for each of these defendants.
15 And they are in an order. One is first; and the other is second.
16 Ladies and gentlemen, I could have just as easily reversed them.

17 What I am telling you is you are to take no hidden meaning
18 communicated to you by the order in which these two possible
19 verdicts are put on this paper. Ladies and gentlemen, it's just
20 reality, if you're going to put two things on a piece of paper,
21 one's got to be first and the other's got to be second. There's
22 no hidden meaning, and I instruct you you must not take that
23 there's any kind of hidden meaning in the way in which these
24 matters are listed on the verdict form.

25 Ladies and gentlemen, I have listed each of the offenses and

1 then each of the two possible verdicts. With regards to
2 Mr. Fortune, no. 1 states, As to the charge of murder, we, the
3 jury, unanimously find the defendant, the two possible verdicts
4 are not guilty and guilty. Irrespective of what the unanimous
5 verdict of this jury is, madam presiding juror, you will circle
6 so there's no question which is the unanimous verdict. You'll
7 simply circle that verdict.

8 The second, no. 2, states, as to the charge of attempted
9 murder, we, the jury, unanimously find the defendant, two
10 possible verdicts, not guilty and the other possible verdict is
11 guilty. You'll simply, whatever is the unanimous verdict of the
12 jury, you will circle that verdict.

13 With regard to no. 3, as to the charge of burglary in the
14 first degree, we, the jury, unanimously find the defendant, two
15 possible verdicts, not guilty and guilty. Whatever is the
16 verdict, unanimous verdict, of the jury, you will circle that
17 verdict.

18 And with regards to no. 4, as to the charge of possession of
19 a firearm or a knife during the commission of a violent crime,
20 we, the jury, unanimously find the defendant, and again two
21 possible verdicts, not guilty and guilty. And as to the
22 unanimous verdict, you will circle.

23 And lastly, with regards to Mr. Fortune, as to the charge of
24 ill-treatment of animals, in general, torture, we, the jury,
25 unanimously find the defendant, and again you will circle one of

1 the two possible verdicts of not guilty and guilty, whichever is
2 the unanimous verdict of the jury.

3 And then it says stop your deliberations. You will sign,
4 you will date the verdict form. For your informational purposes,
5 today is the 18th of May. You know who you are. And that stops
6 the deliberations with regards to Mr. Fortune.

7 The same with regard to Mr. Salazar, except there is the
8 additional charge of possession, concealing, selling or disposing
9 of a stolen vehicle, value more than two but less than \$10,000,
10 we, the jury, unanimously find the defendant, and there are two
11 possible verdicts, guilty or not guilty. You do the same
12 analysis with Mr. Salazar as you did with Mr. Fortune. Whichever
13 is the unanimous verdict of the jury, be it not guilty or guilty,
14 you will circle it so it's clear.

15 With regards to the verdict form involving Mr. Salazar, you
16 will sign where it says presiding juror. You will date the
17 verdict form. For your informational purposes, today is the 18th
18 of May, 2021.

19 When you have concluded your deliberations, when you have
20 filled out your verdict form, when you have signed it, when you
21 have dated it, when your deliberations are concluded, you'll
22 knock on the door and you will return to the courtroom. You do
23 not publish the verdict forms. You will simply pass them forward
24 to me or to the bailiff and the bailiff will pass them on to me.

25 Now, ladies and gentlemen, in a moment I'm going to ask you

1 to step to your jury room. And I'm going to give you this
2 instruction. Do not discuss this matter or allow anyone to
3 discuss it with you. Based on everything that I told you up to
4 this point, you probably thought now is when you're going to
5 begin your deliberations. But it is not. I am going to tell you
6 what's going to happen next.

7 When you step back to your jury room on this occasion, I am
8 going to turn to these attorneys, I'm going to ask them two
9 questions. Have I given this jury all of the law that they may
10 need for their deliberations, and have I stated it to them
11 correctly? These lawyers help me know whether or not I have done
12 that.

13 Now, in the event that I need to bring you back out because
14 I have failed to give you some instruction that you may need for
15 your deliberations, I'm going to ask you, in advance, please
16 don't consider that instruction with any emphasis. It's just
17 it's my one chance to get this right to give you all the law that
18 you may need for your deliberation. So I ask you, in advance,
19 don't consider that instruction with any emphasis.

20 Now, ladies and gentlemen, I may stated something incorrect
21 and, goodness knows, it will be unintended, it will have been
22 unintended, but sometimes something just comes out wrong. And
23 these attorneys help me know that. So I'm going to ask you, in
24 advance, in the event I need to invite you out because I have
25 stated something incorrectly, please allow me to correct my error

1 in your mind.

2 Now, in the event that I do not, I do not need to invite you
3 back out, this is what will happen. You will be brought the
4 verdict forms and the exhibits and your notepads, and you will be
5 given a specific instruction to begin your deliberations. And
6 then you will know that the time has come for you to begin your
7 deliberations.

8 So, ladies and gentlemen, I'm going to ask you, at this
9 time, to please step to your jury room. Do not discuss this
10 matter and do not allow anyone to discuss it with you.

11 Oh, and with my alternates, don't go anywhere. Don't go
12 anywhere. Alternates need to stay with me in the courtroom,
13 please.

14 (WHEREUPON, the jury is escorted out of the courtroom at
15 5:15 p.m.)

16 THE COURT: All right. Alternates. I'm going to ask you to
17 give us just a little bit more of your time because, believe it
18 or not, sometimes we lose a juror, even as the deliberations
19 begin. I'm going to ask you to stay with us, please, for about
20 another 30 minutes. We're going to put you in a whole separate
21 area because I don't want you with our jury at this point. But
22 after that period has passed I'm not so sure I can seat you at
23 that moment, so at that point I will discharge you if you are not
24 needed.

25 But Mr. Jenkins is going to take and you place you in a

1 separate location because at this point you must remain separate
2 from our jury. So if you'll please go with -- Mr. Jenkins, y'all
3 got a place you can put them? Where are you going to put these
4 folks? You can actually put them in the jury room back here.
5 Come on. If you'll just come on this way, we will place you in
6 the jury room back here.

7 (WHEREUPON, the jury alternates are escorted out of the
8 courtroom at 5:17 p.m.)

9 THE COURT: Any exceptions or additions from the state?

10 ATTORNEY OSBORNE: None at all.

11 THE COURT: All right. On behalf of Mr. Fortune?

12 ATTORNEY HUBRICH: No, ma'am.

13 THE COURT: On behalf of Mr. Salazar?

14 ATTORNEY CORNWELL: No, Your Honor.

15 THE COURT: Thank you all so much. And could you all,
16 please, have all the exhibits which are going back, as well as
17 the verdict form, please. And the notepads, if you all gather
18 the notepads. And will you deliver them, Ms. Catherine.

19 THE BAILIFF: I will take them.

20 THE COURT: And give them specific instructions to begin
21 their deliberations. Okay. All right. And then we will, we
22 will be in recess waiting for our jurors.

23 (WHEREUPON, court recessed at 5:18 p.m. and reconvened at
24 6:10 p.m.)

25 THE COURT: We're going to send them a note to see if they

1 want to deliberate this evening or whether they want to come back
2 in the morning, because it's getting a little late.

3 Here we go. Ladies and gentlemen, would you prefer to keep
4 working on come back tomorrow morning and continue your
5 deliberations in the morning? Please advise with a note and send
6 it to me by the bailiff who is outside your jury room.

7 ATTORNEY HUBRICH: I would object, Judge.

8 THE COURT: Okay. Why?

9 ATTORNEY HUBRICH: Because the jury deliberation process is
10 sacred. We've now given them the charge; we've given all of the
11 evidence; we've given our closing arguments. They've only been
12 back there for 30 minutes. You know, sequestration of the jury,
13 especially at this point, is important, and I would just ask ---

14 THE COURT: In other words, you're advocating you want to
15 leave them back there until they reach a verdict?

16 ATTORNEY HUBRICH: Yes, ma'am.

17 THE COURT: Okay, thank you for that. Okay. Over the
18 objection of your client, I'm going to send this note. Do you
19 want them in here to go through that, if they're not present?

20 ATTORNEY HUBRICH: Oh, to me? Do I want them in here, the
21 jury or my client?

22 THE COURT: I thought we were having a conversation, but
23 unfortunately it's turned into something other than that. I
24 think your client should be present unless you waive his
25 presence.

1 ATTORNEY HUBRICH: I can waive his presence.

2 THE COURT: Very well. It's overruled. I'm going to give
3 them that option. Thank you. All right. Hand that to one of
4 the bailiffs. And we will wait to hear from them.

5 (WHEREUPON, court recessed at 6:15 p.m. and reconvened at
6 6:20 p.m.)

7 THE COURT: They want 30 more minutes. So we'll see where
8 they are. All right. Thank you so much.

9 (WHEREUPON, court recessed at 6:20 p.m. and reconvened at
10 6:25 p.m.)

11 (WHEREUPON, Court's Exhibit 6 is marked for identification.)

12 We have another note. Bring the defendants out, please.
13 They would like to be charged with hand in one, hand in all.
14 Y'all want to see the note?

15 THE COURT: All right. We have a note. Jury wants me to
16 recharge on the hand of one is the hand of all.

17 And since we took out the language, the mere presence
18 language, I'm going to charge the mere presence language also.
19 And let's bring in the jury.

20 THE BAILIFF: Yes, ma'am.

21 THE COURT: And for our alternates, do we still have room?
22 I think we do. Where's Leanne? Before our jurors come in,
23 alternates, you cannot interact with the jury. It's fine for you
24 all to be here, it's fine for you to be here. You simply cannot
25 interact, you cannot talk to them, you can't gesture to them.

1 Okay, everybody got it? Thank you all.

2 Let the record reflect they're all in the same row. They
3 won't be physically located with the jury.

4 (WHEREUPON, the jury is seated in the courtroom at
5 6:31 p.m.)

6 CHARGE OF THE COURT

7 THE COURT: All right. Ladies and gentlemen, I have your
8 note where you are asking for the instruction for the hand in one
9 is the hand of all. So I'm happy to recharge you. Lots of times
10 folks want to have the written instruction, but it is our
11 tradition that we deliver them orally.

12 So, hand of one. 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 happens as a probable or natural
17 consequence of the acts done in carrying out the common plan and
18 purpose if two or more people are together, acting together,
19 assisting each other in committing the offense. The act of one
20 is the act of all or, as it's sometimes said, the hand of one is
21 the hand of all.

22 Prior knowledge that a crime is going to be committed
23 without more is not sufficient to make a person guilty of that
24 crime. Mere knowledge that another person is going to commit a
25 crime even if the defendant is present when the crime is

1 committed is not sufficient to convict the defendant as a
2 principle. Guilt as a principal is shown by actual or
3 constructive presence at the scene as a result of a prior
4 arrangement. Therefore, a finding a prior arranged plan or
5 common scheme is necessary for a finding of guilt as a principal.

6 The state must prove beyond a reasonable doubt by competent
7 evidence the theory of the hand of one is the hand of all.

8 A principal of a crime is one who actually either commits
9 the crime or who is present, aiding, abetting or assisting in the
10 committing of the crime.

11 When a person does an act in the presence of and with the
12 assistance of another, the act is done by both. Where two or
13 more, acting with a common plan or intent, are present at the
14 commission of a crime, it does not matter who actually commits
15 the crime. All are guilty. The hand of one is the hand of all.

16 Present at the commission of the crime means to be
17 sufficiently near to aid and abet and assist in the commission a
18 crime.

19 Ladies and gentlemen, I further charge you that mere
20 presence at the scene is not sufficient to prove someone guilty
21 of a crime. A defendant's presence where a crime is being
22 committed or mere association with a person who commits a crime
23 does not make a defendant an accomplice or an aide or abettor of
24 the person committing the crime. The burden is on the state to
25 prove every element of the crime charged.

1 If you find, after reviewing all the evidence, that the
2 state has proved that the defendant was only present at the scene
3 of the crime and that they have not proved beyond a reasonable
4 doubt any other participation in the crime, then you must find
5 the defendant not guilty. Now, of course, that applies to each
6 of these defendants. The law is that proof of the defendant at
7 the scene of the crime is not sufficient to find someone guilty.

8 Ladies and gentlemen, please retire to your jury room. You
9 wanted an additional 30 minutes. Just keep us apprised of where,
10 if you wish to continue, continue. If you wish to take a break,
11 go home for the evening and reconvene in the morning, perfectly
12 fine.

13 So at this juncture, you all will just continue your work.
14 And, thank you.

15 (WHEREUPON, the jury is escorted out of the courtroom for
16 further deliberations at 6:36 p.m.)

17 THE COURT: Anything further from the state?

18 ATTORNEY OSBORNE: No, Your Honor.

19 THE COURT: All right. On behalf of Mr. Fortune?

20 ATTORNEY HUBRICH: Nothing, Your Honor.

21 THE COURT: All right. On behalf of Mr. Salazar?

22 ATTORNEY CORNWELL: Nothing, Your Honor.

23 THE COURT: We will continue in recess until we hear from
24 our jury. I think maybe don't go far. They said they wanted 30
25 minutes and they wanted that charge. So they may be tired or may

1 not, I don't know. But don't go far.

2 (WHEREUPON, court recessed at 6:36 p.m. and reconvened at
3 6:54 p.m.)

4 THE COURT: Let's have that marked. The jury.

5 (WHEREUPON, Court's Exhibit 7 are marked for
6 identification.)

7 (WHEREUPON, the jury is seated in the courtroom at
8 6:56 p.m.)

9 THE COURT: All right. Ladies and gentlemen, I have your
10 note. We will have gloves for you in the morning.

11 Now, you are going to be going home this evening. And a
12 couple things are going to happen to you. Number one, you're
13 going to be tempted to do some sort of investigation. You know,
14 we have the world of information at our fingertips. You cannot
15 do that; you must not do that.

16 The other phenomenon that happens to jurors is that you've
17 been together for a while and now you start working on the case,
18 sometimes there's a desire to want to reach out in terms of
19 social media to your fellow jurors and to try to communicate
20 about the case. You cannot do that, either.

21 You have received the information from which you will make
22 up your minds, but your deliberations must be with each other in
23 the jury room, and you cannot interject anything additionally, be
24 that research, be that discussions with, you know, with family,
25 friends, coworkers or the like.

1 see -- well, I actually won't see y'all in the morning, because
2 y'all go into your jury room and continue your deliberations.
3 Thank you so much. Have a good evening. And thank you. Y'all
4 know that you don't have to report to the jury room now.

5 (WHEREUPON, the jury is dismissed for the day at 7:00.)

6 THE COURT: All right. Anything further from the state?

7 ATTORNEY OSBORNE: No, Your Honor.

8 ATTORNEY HUBRICH: Judge, I'm unclear. Nine or 9:30?

9 THE COURT: What did I say?

10 ATTORNEY HUBRICH: You said 9:00 in the beginning and
11 then 9:30.

12 THE COURT: Well, I did say 9:00 because I was hoping that
13 would be some assistance to Ms. Cornwell. She said it's not
14 needed, so I switched it to 9:30.

15 ATTORNEY HUBRICH: Okay. Thank you.

16 (WHEREUPON, court recessed for the day at 7:01 p.m. and
17 reconvened at 11:47 a.m. on Wednesday, May 19, 2021.)

18 THE COURT: Counsel, if you want to approach, you can go
19 ahead and read the note.

20 (WHEREUPON, an off-the-record discussion is held at
21 sidebar.)

22 THE COURT: All right. I'm going to give the jury the *Allen*
23 charge, is what I propose to do. We have the note from them.
24 And if you will bring in the jury.

25 THE BAILIFF: Yes, ma'am.

1 (WHEREUPON, the jury is seated in the courtroom at
2 11:53 a.m.)

3 CHARGE OF THE COURT

4 THE COURT: All right. Ladies and gentlemen, I have your
5 note. And in response to the note, I'm going to give you an
6 additional charge. Ladies and gentlemen, you have indicated by
7 your note that you have been unable to agree to all, to verdicts
8 in this case completely.

9 As I instructed you earlier, your verdict must be unanimous.
10 Ladies and gentlemen, when a matter is in dispute it isn't always
11 easy for even two people to agree, so when 12 people must agree,
12 it becomes even more difficult. In most cases, absolute
13 certainty cannot be reached or expected. We talked about that in
14 the charge. However, you have a duty, you have a duty, to make
15 every reasonable effort to reach a unanimous verdict.

16 In doing this, you should consult with one another, express
17 your own views and listen to the opinions of your fellow jurors.
18 Tell each other how you feel and why you feel that way. Discuss
19 your differences with open minds. Although the verdict of the
20 jury must be unanimous, every one of you has the right to your
21 own opinion. The verdict you agree to must be your own verdict,
22 the result of your own convictions, and you should not give up
23 your firmly held beliefs merely to be in agreement with your
24 fellow jurors. The majority should consider the minority's
25 position, and the minority should consider the majority's

1 position. You should carefully consider and respect the opinions
2 of each other and reevaluate your position for reasonableness,
3 correctness and impartiality.

4 You must lay aside all outside matters and reexamine the
5 questions before you based on the law and evidence in this case.

6 If you do not agree on a verdict, I must declare a mistrial.
7 In that case it does not mean anybody wins; it just means that at
8 some future time I will try this case, or another judge will try
9 this case, with some other jury sitting, perhaps where you now
10 sit. They may even return to the jury box. The same
11 participants will come and the same lawyers will ask basically
12 the same questions and get basically the answers, and we will go
13 through the whole process again.

14 You were selected in the same manner and from the same
15 source as any future jury will be, and there is no reason for me
16 to suppose that the case will ever be submitted to 12 more
17 intelligent, impartial, conscientious and competent jurors than
18 you, or that more or clearer evidence will be produced on one
19 side or the other.

20 I, therefore, ask that you please return to your
21 deliberations with the hope that you can arrive at your verdict
22 in this matter. I ask to you please retire to your jury room and
23 continue your deliberations.

24 (WHEREUPON, the jury is escorted out of the courtroom at
25 11:59 a.m.)

1 THE COURT: All right. Anything further from the state?

2 ATTORNEY OSBORNE: No, Your Honor.

3 THE COURT: On behalf of Mr. Fortune?

4 ATTORNEY HUBRICH: No, ma'am.

5 THE COURT: On behalf of Mr. Salazar?

6 ATTORNEY CORNWELL: No, Your Honor.

7 THE COURT: Thank you all so much. All right.

8 (WHEREUPON, court recessed at 12:00 p.m. and reconvened at
9 1:26 p.m.)

10 ATTORNEY HUBRICH: Judge, do you want my family downstairs
11 still?

12 THE COURT: I do, because the jury is still -- I don't know
13 that we have sufficient space. But at this moment while the
14 jury's still here, just tell them to hang tight downstairs.
15 You're on with them, though; right?

16 ATTORNEY HUBRICH: I can't connect, but it's okay. Maybe
17 Pierce can.

18 THE COURT: Anything from the state before I bring the jury
19 out?

20 ATTORNEY OSBORNE: No, ma'am.

21 THE COURT: Anything on behalf of Mr. Fortune?

22 ATTORNEY HUBRICH: No, ma'am.

23 THE COURT: Anything on behalf Mr. Salazar?

24 ATTORNEY HUBRICH: No, Your Honor.

25 THE COURT: Very well. Bring the jury in, please.

1 (WHEREUPON, Court's Exhibit 8 is marked for identification.)

2 (WHEREUPON, the jury is seated in the courtroom at

3 1:31 p.m.)

4 THE COURT: All right. Madam presiding juror, it is my
5 understanding the jury has reached its verdict. Is that correct?

6 THE FOREPERSON: Yes, ma'am.

7 THE COURT: If you'll please pass that along to one of our
8 bailiffs, who will bring it to me. Thank you.

9 THE BAILIFF: May I approach, Your Honor?

10 THE COURT: Yes, thank you. All right. Counsel, let me see
11 you for a second, please.

12 (WHEREUPON, an off-the-record discussion is held at
13 sidebar.)

14 THE COURT: All right. Tonda.

15 CLERK OF COURT: Yes, ma'am.

16 VERDICT OF THE JURY

17 THE COURT: Please publish the verdict.

18 CLERK OF COURT: Yes, ma'am. In the matter of the State of
19 South Carolina versus Muanah Fortune, Indictment No.

20 2019-GS-18-416, 417, 418, 420 and 421. As to the charge of
21 murder, we, the jury, unanimous find the defendant guilty.

22 THE COURT: Which?

23 CLERK OF COURT: This is Muanah Fortune.

24 THE COURT: Very well.

25 CLERK OF COURT: Yes, ma'am. As to the charge of attempted

1 murder, we, the jury, unanimously find the defendant guilty; as
2 to the charge of burglary in the first degree, we, the jury,
3 unanimously find the defendant guilty; as to the charge of
4 possession of a fireman or knife during the commission of a
5 violent crime, we, the jury, unanimously find the defendant
6 guilty; as to the charge of ill-treatment of animals, in general,
7 torture, we, the jury, unanimously find the defendant guilty.

8 Signed and dated May the 19th, 2021, by Presiding Juror
9 Carrie Rafferty.

10 In the matter of the State of South Carolina versus Polo
11 Salazar, Indictment No. 2019-437 440, 438, 441, 443 and 439. As
12 to the charge of murder, we, the jury, unanimously find the
13 defendant guilty; as to the charge of attempted murder, we, the
14 jury, unanimously find the defendant guilty; as to the charge of
15 burglary in the first degree, we, the jury, unanimously find the
16 defendant guilty; as to the charge of possession of a firearm or
17 knife during the commission a violent crime, we, the jury,
18 unanimously find the defendant guilty; as to the charge of
19 ill-treatment of animals, in general, torture, we, the jury,
20 unanimously find the defendant guilty; as to the charge of
21 possession, conceal, sell or dispose of stolen vehicle, value
22 more than 2,000 but less than 10,000, we, the jury, unanimously
23 find the defendant guilty.

24 Dated May 19th, 2021, signed by Presiding Juror Carrie
25 Rafferty.

1 THE COURT: Ladies and gentlemen, if this was your verdict
2 in your jury room and continues to be your verdict here in the
3 courtroom, please indicate by raising your right hand.

4 (The jury responds.)

5 THE COURT: Let me observe, for the record, all the jurors
6 have their right hands raised. Thank you very much. You may put
7 your hands down. Anything from the state before we dismiss the
8 jury?

9 ATTORNEY OSBORNE: No, Your Honor.

10 THE COURT: From the Defendant Fortune?

11 ATTORNEY HUBRICH: No, ma'am.

12 THE COURT: From the Defendant Salazar?

13 ATTORNEY CORNWELL: No.

14 THE COURT: Counsel, let me see you.

15 (WHEREUPON, an off-the-record discussion is held at
16 sidebar.)

17 THE COURT: Yes, ma'am?

18 ATTORNEY CORNWELL: Your Honor, at this time
19 Defendant Salazar would ask that Your Honor poll the jury.

20 THE COURT: Thank you. Yes, ma'am?

21 ATTORNEY HUBRICH: The same.

22 CLERK OF COURT: As I call your juror name and number, if
23 you'll please stand. Juror no. 312, Thomas Saatela.

24 Was this your verdict in the jury room?

25 JUROR NO. 312: Yes, ma'am.

1 CLERK OF COURT: Is it still your verdict?

2 JUROR NO. 312: Yes, ma'am.

3 CLERK OF COURT: Thank you. Juror 126, Christopher
4 Greenhill. Was this your verdict in the jury room?

5 JUROR NO. 126: Yes, ma'am.

6 CLERK OF COURT: Is it still your verdict?

7 JUROR NO. 126: Yes, ma'am.

8 CLERK OF COURT: Thank you. Juror no. 153, Davon Hunter.
9 Was this your verdict in the jury room?

10 JUROR NO. 153: Yes, ma'am.

11 CLERK OF COURT: Is it still your verdict?

12 JUROR NO. 153: Yes, ma'am.

13 CLERK OF COURT: Thank you. Juror no. 28, Brandon Boykin.
14 Was this your verdict in the jury room?

15 JUROR NO. 28: Yes, ma'am.

16 CLERK OF COURT: Is it still your verdict?

17 JUROR NO. 28: Yes, ma'am.

18 CLERK OF COURT: Thank you. Juror no. 189, Karen
19 Kuykendall.

20 JUROR NO. 189: Yes, ma'am.

21 CLERK OF COURT: Was this your verdict in the jury room?

22 JUROR NO. 189: Yes, ma'am.

23 CLERK OF COURT: Is it still your verdict?

24 JUROR NO. 189: Yes, ma'am.

25 CLERK OF COURT: Thank you. Juror no. 276, Alexandria

1 Pendio. Was this your verdict in the jury room?

2 JUROR NO. 276: Yes, ma'am.

3 CLERK OF COURT: Is it still your verdict?

4 JUROR NO. 276: Yes, ma'am.

5 CLERK OF COURT: Thank you. Juror no. 57, Salvador Chaves.

6 Was this your verdict in the jury room?

7 JUROR NO. 57: Yes, ma'am.

8 CLERK OF COURT: Is it still your verdict?

9 JUROR NO. 57: Yes, ma'am.

10 CLERK OF COURT: Thank you. Juror no. 4, Diania Ancrum.

11 Was this your verdict in the jury room?

12 JUROR NO. 4: Yes.

13 CLERK OF COURT: Is it still your verdict?

14 JUROR NO. 4: Yes.

15 CLERK OF COURT: Thank you. Juror no. 366, Christopher

16 Tucker. Was this your verdict in the jury room?

17 JUROR NO. 366: Yes, ma'am.

18 CLERK OF COURT: Is it still your verdict?

19 JUROR NO. 366: Yes, ma'am.

20 CLERK OF COURT: Thank you. Juror no. 353, Shelia Summers.

21 Was this your verdict in the jury room?

22 JUROR NO. 353: Yes, ma'am.

23 CLERK OF COURT: Is it still your verdict?

24 JUROR NO. 353: Yes, ma'am.

25 CLERK OF COURT: Thank you. Juror no. 289, Carrie Rafferty.

1 Was this your verdict in the jury room?

2 JUROR NO. 289: Yes, ma'am.

3 CLERK OF COURT: Is it still your verdict?

4 JUROR NO. 289: Yes, ma'am.

5 CLERK OF COURT: Thank you. And juror no. 35, Joanne Smith.

6 JUROR NO. 335: Yes, ma'am.

7 CLERK OF COURT: Was this your verdict in the jury room?

8 JUROR NO. 335: Yes, ma'am.

9 CLERK OF COURT: Is it still your verdict.

10 JUROR NO. 335: Yes, ma'am.

11 CLERK OF COURT: Thank you. Thank you, Judge.

12 THE COURT: Let the record reflect that all jurors have been
13 polled, and they have indicated that the verdict was their
14 verdict in the jury room, and it continues to be their verdict
15 here in the courtroom. All right.

16 Anything further from anyone before I dismiss our jury?

17 ATTORNEY OSBORNE: No, Your Honor.

18 THE COURT: No from the state; no from Mr. Fortune; and no
19 from Mr. Salazar.

20 ATTORNEY CORNWELL: No, Your Honor.

21 THE COURT: Very well. Ladies and gentlemen, I want to
22 thank you for your service on this jury and on this jury panel
23 this week. You all have worked very hard, and we are all
24 grateful for every single, solitary click of the clock.

25 I do need to give some instruction. Those of you, first of

1 our appreciation. You are where the rubber meets the road in a
2 democracy, and I am so grateful to each and every one of you, and
3 our alternates, and also for every moment, every tick of the
4 clock. Thank you.

5 At this time if you wish to leave, you are certainly free to
6 go. And if you wish to remain, you're welcome. It's completely
7 left up to you at this time.

8 All right, counsel. You will prepare for sentencing, please.

9 ATTORNEY CORNWELL: Your Honor, we've got some matters we
10 need to put on the record.

11 THE COURT: Yeah, sure.

12 ATTORNEY CORNWELL: Prior.

13 ATTORNEY HUBRICH: Judge, if we could mark the note from the
14 jury.

15 THE COURT: I'm sorry, what?

16 ATTORNEY HUBRICH: Mark the note from the jury.

17 THE COURT: Yeah. I think it's already been marked.

18 ATTORNEY HUBRICH: And read it into the record so that we
19 can ---

20 THE COURT: Sure, be happy to do it. All right. I am
21 publishing what has been marked as Court's Exhibit No. 8. It
22 says this: Judge, even though we, the jury, made a decision on
23 this trial, some wish we did not have the law of hand of one is
24 hand of all, because we know this decision will hurt the suspects
25 and their families, but also know the victims' family are getting

1 the justice their loved one deserves.

2 Our hearts go out to all involved, so please take this into
3 consideration when sentencing. And it is signed by the presiding
4 juror and dated this date. And it is Court's Exhibit No. 8.

5 ATTORNEY HUBRICH: Judge, before I address that, I would
6 request that my client's family be permitted into the courtroom
7 for sentencing purposes.

8 THE COURT: Thank you so much. They are certainly. At this
9 juncture, they are on the feed. And I will have them come up if
10 they want to speak, certainly. But we still have COVID
11 restrictions. And I am so sorry.

12 ATTORNEY HUBRICH: They do wish to speak.

13 THE COURT: Sure. Sure.

14 ATTORNEY HUBRICH: I know at least his mother does.

15 THE COURT: Sure.

16 ATTORNEY CORNWELL: Your Honor, I would make that -- I
17 understand your ruling. Obviously sentencing, in a case of this
18 magnitude, the defendant's family's in court, and their input in
19 sentencing is very important. I know we do have a couple pews in
20 the back that would be separate from the jury if one or two
21 members could at least come and sit on the back pew. And those
22 will be the ones who intend on speaking.

23 THE COURT: You know, again, they can all hear in there
24 together. That's why we're doing the feed. But I certainly want
25 them to come up and speak.

1 ATTORNEY HUBRICH: Thank you, Your Honor.

2 THE BAILIFF: Your Honor, okay to bring some of the folks
3 in?

4 THE COURT: Well, like I said, we just don't have room. And
5 I'm so sorry. It's going to jam folks so very close together.
6 But when folks come to speak, I certainly want them. They can
7 come in, they can come in one at a time. I want them to be able
8 to hear. And we will wait in between so they can come so
9 everyone can hear. And as they speak, they can come forward.
10 Okay. In other words ---

11 THE BAILIFF: Bring them up and then put them on the
12 outside, Your Honor?

13 THE COURT: No, because then they can't hear. I want them
14 to be able to participate.

15 THE BAILIFF: Okay.

16 THE COURT: So listen to me. We're not going to make any
17 changes right now.

18 THE BAILIFF: Yes, ma'am.

19 THE COURT: Okay. When the folks want to speak, I want them
20 to come up. I'm going to wait for them to come from downstairs
21 upstairs to speak because I want them to be able to be
22 participants.

23 THE BAILIFF: Okay.

24 THE COURT: That's why we're streaming it downstairs. We do
25 not have room up here.

1 THE BAILIFF: Yes, ma'am.

2 THE COURT: I am so sorry.

3 THE BAILIFF: Yes, ma'am.

4 THE COURT: We jammed everybody together. We've got more
5 people in this room right now than we're supposed to pursuant to
6 the CDC guidelines.

7 THE BAILIFF: Than you're supposed to. Yes, ma'am.

8 THE COURT: And I don't know what the vaccination is for
9 individuals. We've got more people in this room right now than
10 we should have pursuant to CDC guidelines. Is that clear?

11 THE BAILIFF: Yes, ma'am.

12 THE COURT: Is that clear?

13 THE BAILIFF: Yes, ma'am.

14 THE COURT: Thank you. Okay. Yes.

15 ATTORNEY HUBRICH: Thank you, Judge. May it please the
16 Court. With regards to the note that was sent with the verdict,
17 my reading of the note indicates to me that the jury was
18 contemplating things that were outside the law, that was outside
19 what you instructed them to contemplate. It compromises the
20 deliberation and compromises the verdict.

21 And I am making a motion at this point to issue a judgment
22 notwithstanding the verdict, or to set aside the jury verdict of
23 this case.

24 THE COURT: All right. And you would join in that?

25

1 ATTORNEY CORNWELL: Yes, Your Honor.

2 THE COURT: Anything you wish to add?

3 ATTORNEY CORNWELL: Your Honor, I believe that the jury was
4 pretty clear in their note of their feelings of this based on
5 purely the hand of one is the hand of all. And I think that that
6 goes to show that, in the deliberation room there was a lot of --
7 and the fact the jury was out this long -- goes to show that
8 there was a lot of consternation over what these gentlemen did or
9 did not do and how they were or were not involved.

10 And based on that and the charges we are facing right now, I
11 believe the appropriate motion and the appropriate order at this
12 point would be to set aside the jury verdict. And we would join
13 in that motion.

14 THE COURT: Got it. I respectfully deny the motion. I
15 think that the note speaks for itself. I think what they didn't
16 do is jury nullification. I think what they said is, we don't
17 particularly like this law, but we understand it, we understand
18 our duty. We did not have jury nullification of the law. I
19 think that it's indicative that they carried out their duty. And
20 that's how I take it.

21 I also take it that they've expressed empathy for all, and
22 take it for no more than the fact that they feel empathy for all.
23 And I would respectfully deny your motion.

24 Anything further to add on behalf of the state?

25 ATTORNEY OSBORNE: No, Your Honor. I agree totally.

1 THE COURT: Okay, very well. All right. Anything further
2 before we shift into sentencing by anyone?

3 ATTORNEY HUBRICH: No, Your Honor.

4 THE COURT: All right. Very well. Okay, thank you all so
5 much. I need to hear -- if you'll come forward. And, obviously,
6 the victim's family/victims, I am happy to hear from them.

7 ATTORNEY OSBORNE: Would you like me to bring the sentencing
8 issues?

9 THE COURT: Yes.

10 ATTORNEY OSBORNE: Your Honor, on behalf of the state, I
11 don't have anything to add. I don't like putting on a robe when
12 you've heard enough of the facts in this case. If any of the
13 victims' family members would like to speak, now would be the
14 time.

15 THE COURT: Come on forward. I need you to to identify
16 yourself. Have you been vaccinated?

17 MR. DENNIS WEAVER: I have not.

18 THE COURT: You have not?

19 MR. DENNIS WEAVER: No, ma'am.

20 THE COURT: All right. I'm going to have to ask you to put
21 your mask back up, sir. And state your full name.

22 MR. DENNIS WEAVER: MR. WEAVER: My name's Dennis Weaver.

23 THE COURT: Yes, sir, Mr. Weaver.

24 MR. DENNIS WEAVER: Your Honor, on behalf of the family of
25 Joe Weaver, his son, Steven, who's in the courtroom ---

1 THE COURT: Wait a minute. I'd like to see Steven.

2 (Response.)

3 THE COURT: Thank you, Steven.

4 MR. DENNIS WEAVER: His dad, Joe, my brother.

5 (Response.)

6 THE COURT: Thank you.

7 MR. DENNIS WEAVER: And his mother, Brenda.

8 (Response.)

9 MR. DENNIS WEAVER: Aunts, uncles, cousins.

10 (Response.)

11 MR. DENNIS WEAVER: And myself. I'm an uncle. First of
12 all, I want to thank you, the Court, the officers, the
13 solicitor's office, respectfully the defense attorneys, and all
14 the law enforcement personnel that had this case. A little
15 nervous.

16 Please know that our beloved J.B. will never walk the earth
17 again. So at this point, due to the heinous and torturous nature
18 of the way our family member was murdered, we feel the defendants
19 should not be allowed to walk our streets, either.

20 There's been no remorse shown throughout the last two-plus
21 years since this crime was committed. We understand and know
22 that the death penalty is not an option, even though J.B. was
23 executed while lying on the floor in that house.

24 While we have sympathy for the families of the defendants,
25 we still ask you, at this time, to sentence these guys to life,

1 with no opportunity for parole. Thank you.

2 THE COURT: Thank you so much, Mr. Weaver.

3 Yes, sir.

4 MR. PORTER: Good afternoon, Judge.

5 THE COURT: Good afternoon.

6 MR. PORTER: First, I want to thank you for allowing my
7 service dog in here.

8 THE COURT: Yes, sir.

9 MR. PORTER: I was kind of up in the air about what to say,
10 what to say if I was to going to say anything, because I knew he
11 was going to do a good job. But I guess I just want the courts
12 to know the impact this had on my life. It has changed
13 everything about me.

14 I know wasn't living right. And I just know that what
15 happened that night, no matter how bad I do, I didn't deserve
16 that, J.B. didn't deserve that, and my dog didn't deserve that.

17 Learning to live again. I haven't moved on in two years.
18 I've been stuck in a rut because of this situation, because of
19 these guys and their actions, directly or indirectly. I thought
20 I'd feel better once I heard a guilty plea, but I don't, I don't
21 at all. That's all.

22 THE COURT: Thank you so much.

23 MR. PORTER: Thank you.

24 THE COURT: All right.

25 ATTORNEY OSBORNE: That's it, Your Honor.

1 to -- they've recommended leniency. And I would ask you to go
2 with a 30-year sentence in this case, which is the minimum that
3 you can give under the law. Thank you.

4 THE COURT: Thank you so much.

5 All right. I think I want to hear about Mr. Salazar.

6 ATTORNEY OSBORNE: Yes. May I just address one issue
7 regarding the plea offer? I think it's only fair.

8 THE COURT: Without a doubt. Sure.

9 ATTORNEY OSBORNE: Okay. When this trial started, we went
10 about two days into the trial ---

11 ATTORNEY CORNWELL: Your Honor, may he address the Court and
12 not the jury.

13 THE COURT: Yes.

14 ATTORNEY OSBORNE: And Your Honor is very well aware of what
15 happened. And I'm not taking any position on sentencing now. I
16 just want all of this to be put out there. We extended an offer
17 to both Mr. Salazar and Mr. Fortune, and the offer being a
18 minimum sentence of 30 years would not be opposed by the state
19 and, very reluctantly, I got the family to agree to that. And I
20 said if that plea wasn't entered by the start of Monday morning,
21 it's over.

22 The counteroffer was 15 years and 5 years, and we said no.
23 That's why we're here right now.

24 ATTORNEY HUBRICH: I think that's what I put on the record,
25 Judge.

1 THE COURT: Now can I hear about Mr. Salazar's record, if
2 any?

3 ATTORNEY OSBORNE: Same position with Salazar.

4 THE COURT: He has no record?

5 ATTORNEY OSBORNE: No. No, neither one.

6 THE COURT: Neither one, okay. I knew with regard to
7 Mr. Fortune. I did not know with regard to Mr. Salazar.

8 Yes, ma'am.

9 ATTORNEY CORNWELL: Your Honor, you know me well. And I am
10 in a very unique position today, because this is the first time
11 I've been on this side of the aisle. For 10 years I was
12 prosecutor, and I was a tough prosecutor.

13 THE COURT: Yes, ma'am.

14 ATTORNEY CORNWELL: I had a repetition.

15 THE COURT: Yes, ma'am.

16 ATTORNEY CORNWELL: And for the Court's edification, I will
17 not say the names that I've been called before as a prosecutor.

18 THE COURT: And you deliver that same alacrity, shall we
19 say, for the defense.

20 ATTORNEY CORNWELL: So I am in a unique position here where,
21 knowing my record as a prosecutor and how tough I prosecuted
22 crimes in this very circuit, to have the opportunity to have the
23 first case on the defense side, here representing Polo Salazar.
24 It's been eye-opening.

25 It was hard for me because he is a good kid, he comes from a

1 good family, he has opportunities. And I am angry right now
2 because I don't feel that this is just.

3 When I prosecuted cases, when you had a case like this the
4 solution, as a prosecutor, your job is to do justice, it is to
5 seek justice. And while I agree with the jury's verdict under
6 the hand of one, hand of all, if they believed that there was a
7 common scheme or plan and that this resulted from that common
8 scheme or plan, yes, that is hand of one, hand of all.

9 But in looking for just sentencing and for justice, knowing
10 that these two young men never went into that house to kill
11 anybody, to harm anybody, to shoot anybody, that that was not any
12 sort of action that was ever considered by these young men. And
13 had it been a plan or a scheme, I can tell Your Honor
14 wholeheartedly that I don't believe either of these two young men
15 would have participated at that point.

16 There was never any intent for any weapon to ever be fired.
17 And yet there is a problem with young people today not
18 understanding the dangers of firearms. Is you're going to if
19 carry a firearm, you have to expect that it's going to go off and
20 there's going to be injury and there's going to be harm done.

21 Thinking that in theory and seeing it happen, seeing
22 something that you had no intention of having happen happen, I
23 think is eye-opening for me. And when you look at a case like
24 this I think that, in considering justice, you have to see what
25 role each person played. There are plenty of mitigating factors

1 that one should consider.

2 In this case, what I believe should have happened, and
3 Mr. Salazar also offered -- I got into this case the beginning of
4 March, I've been in this for 60 days. So I haven't had the
5 opportunity to get to know as many people, to get to speak to as
6 many people Mr. Salazar has, but the family members that I have
7 met, and just in my multiple meetings with Mr. Salazar, shows
8 what a good person he is, what a good family he has, how he was
9 raised. And I think he would tell you he was never raised to be
10 in this position, that this is completely out of character.

11 And I think that, when you look at these mitigating factors
12 and what you consider -- and I will say, and I believe Your Honor
13 is aware, that during this week I actually asked 10 to 15, I
14 thought that was fair, I thought that was just. Because I think
15 if you believe that these young men went there with the purpose
16 of getting marijuana, by force or however, if you're looking at
17 armed robbery, burglary, no prior record, 10 to 15 is just.

18 For the other two gentlemen, the ones that actually fired
19 the shots, the ones that actually committed these heinous
20 murders, I believe that that is appropriate for a 30 to life.

21 And we also went to the state and offered to come and
22 testify against them, to help them in making sure that this
23 family gets justice for their loved one and that the person that
24 killed their loved one is found guilty. We made that offer, as
25 well, and the state didn't want to hear it. In chambers we said

1 give us 10 to 15; give us some range; let us plead to voluntary
2 straight up, and the state would not have it. Their best offer
3 was, We won't oppose 30 years. And for this young man, knowing
4 statistics of the jail, knowing what we know, 30 years might as
5 well be life at that point.

6 So that is why we pushed forward. And now we're here. And
7 I am angry. My emotions in this are all over the place. I
8 understand it from a prosecution standpoint, I am angry from a
9 professional standpoint, and I am heartbroken from a personal
10 standpoint.

11 At this point I think his mother would like to come in and
12 speak to your Honor.

13 THE COURT: Happy to hear from whomever would like to speak
14 on behalf of Mr. Salazar.

15 ATTORNEY HUBRICH: Your Honor, may she hug her son?

16 THE COURT: Sure. Of course.

17 Yes, ma'am. All I need you to do is, please, just identify
18 yourself for our record.

19 MS. MCKEE: I'm Sonovia McKee, the mother of Polo Salazar.
20 As I sit here through this trial the whole time, listening to
21 what went on, it took me back, because I know I look to the hills
22 from which cometh my help, and my help comes from the Lord, and
23 I'm a child of his. And I raised my son in the admiration of
24 God. When God gave him to me, I gave him back to God. And I
25 know God has him.

1 He has accomplished being a certified forklift operator and
2 a heavy equipment operator in the short while. And I know this
3 is not him. This is not him. A murderer? No. Cruelty to
4 animals? No. Grandfather -- he was raised on a farm, took care
5 of animals. I know this is not my son.

6 I don't know why the verdict came back this way with no
7 evidence pinning on him. But, son, as I stand here today, and as
8 you know, I will always be here for you, I will always be here
9 for you. God never gave up on his children, and I will not give
10 up on you. I will not give up on you. My love is
11 unconditionally, you know that.

12 It's okay. Right now I will, I will, I will fight for you,
13 I will fight for you, know that. Mama ain't going to give up on
14 you, mama will never give up to you, because I never believed you
15 did it.

16 And with the evidence put forth, I know -- I just don't know
17 why, I don't know why, I don't know why, I don't know why, I
18 don't know why. But just know I love you. I love you.

19 THE COURT: All right, thank you. Thank you, Ms. McKee.

20 MS. MCKEE: I thank you.

21 THE COURT: Yes, ma'am.

22 ATTORNEY HUBRICH: Your Honor, I'm going to go see if his
23 brother wants to speak real quick.

24 THE COURT: Sure. Sure.

25 ATTORNEY HUBRICH: May I have a moment to see?

1 THE COURT: Sure. Yes.

2 ATTORNEY CORNWELL: Your Honor, I know that you have a
3 difficult position in this case. You've got to weigh both sides.
4 There was one thing that the victim's family said, and I've had
5 to deal with this myself, about there being no remorse. And
6 obviously there's a no contact in all bond orders. While these
7 young men did not have bond, there's still a no-contact order in
8 place. But I can tell the Court that, in speaking to
9 Mr. Salazar, he has shown me nothing but remorse for what
10 happened in that house.

11 Now, he has maintained that he was never inside that house,
12 and I do believe him. I think that there are some decisions that
13 he made that night. But, at the end of the day, he will tell the
14 Court that he would never have wanted this to happen and he is so
15 sorry that things went down the way that they did. And if he
16 could have stopped them, he would have.

17 Mr. Salazar is not somebody that has malice or ill will in
18 his heart. Every time I walked into a room he gets a smile on
19 his face. He's got an infectious smile. And he has always
20 expressed this isn't where his life is supposed to be, and that
21 he never wanted anything like this to ever happen.

22 The dog breaks his heart. As his mom told you, he grew up
23 with his grandfather on a farm, he's raised animals, he's got
24 dogs, himself. So that's never anything that's ever been in his
25 mindset or in his heart to do. And he's got a good heart. He's

1 got a good family. He's got a good support system. Even Aunt
2 Bess, you know, while she's not his blood aunt, she's his Aunt
3 Bess, too, and you saw the love that they have.

4 I think, when measuring justice in this case, with the
5 options that you have and understanding the victims' families'
6 position, I believe that 30 years for what he was convicted of
7 for his role, for how the jury has indicated, through their note
8 and their sympathy, they went by the law and what they believed
9 the law, the facts in this case showed with the law.

10 But I believe that the law also needs to measure justice
11 with consequences. And in this case, I think that justice is
12 giving a minimum sentence, which I understand where Your Honor is
13 at, is 30 years. So we would respectfully request Your Honor to
14 enter that 30-year sentence and run all of his charges
15 concurrent.

16 THE COURT: Thank you so much.

17 ATTORNEY CORNWELL: Thank you, Your Honor.

18 THE COURT: Thank you. Mr. Salazar, Ms. Cornwell, thank
19 you.

20 Ladies and gentlemen, we've been at this for quite some
21 time. And I'm going to take a very short break, not more than
22 five minutes. So, please, don't anyone go very far. And then we
23 will reconvene in literally about five minutes.

24 (WHEREUPON, court recessed at 2:38 p.m. and reconvened at
25 2:57 p.m.)

1 THE COURT: Have the defense come around, please. All
2 right. I have just taken a minute, a couple things that I wanted
3 to check just to be sure that -- the gun charge, I needed to see,
4 I needed to read that statute, the sentencing statute, on that
5 one. And I've done that, did what I needed to do.

6 And I'm prepared to pass sentence, Mr. Fortune, on you. And
7 I would ask if there's any further elocution on behalf of
8 Mr. Fortune?

9 ATTORNEY HUBRICH: No, ma'am.

10 THE COURT: Very well. You know, it's always heartbreaking,
11 and it's heartbreaking for the families, and these matters are
12 always extraordinarily excruciating, especially with someone so
13 young.

14 And I am mindful, and I really speak to the family of
15 Mr. Weaver, because I know in their hearts, when you saw these
16 young men get their hug, it tugged on your heart. And I am
17 sure -- I'm looking for Mr. Weaver's son, I am sure -- that, you
18 know, you thought, you know, I don't get to hug my dad anymore;
19 I'd like to hug my dad like they're getting that hug, and you're
20 not. And I thought about that, and I thought about you. I
21 thought about brothers, and I thought about loved ones. You
22 know, we all have lacked for hugs like never before in the past
23 year. And while I was glad these young men were able to get a
24 hug from their loved one, I was very mindful. Just so you know,
25 I was very mindful that those are hugs that you will not have and

1 that you miss. So I thought that needed to be said.

2 Mr. Fortune, I am heartbroken that you found yourself in
3 this place. I am heartbroken that you found yourself with these
4 people. I am heartbroken about what occurred. And I'm
5 heartbroken about your role in it.

6 SENTENCE OF THE COURT

7 With regards to 2019-GS-18-0416, Mr. Fortune, I am going to
8 commit you to the State Department of Corrections for a period of
9 40 years.

10 With regards to 2019-GS-18-0417, I'm going to -- which is
11 the indictment for attempted murder -- I am going to commit you
12 to the State Department of Corrections for a period of 30 years.

13 With regards to 2019-GS-18-0418, which is burglary in the
14 first degree, I am going to commit you to the State Department of
15 Corrections for a period of four years.

16 With regards to 2019-GS-18-0421, which is the indictment for
17 ill-treatment of animals, in general, torture, I am going to
18 commit you to the state Department of Corrections for a period of
19 five years.

20 And with regard to -- and the sentences that I have just
21 spoken of, they will run concurrent.

22 With regards to 2019-GS-18-0420, possession of a firearm
23 during the commission of a violent crime, I am going to commit
24 you to the State Department of Corrections for a period of five
25 years. And this sentence will run consecutive to the others.

1 You are to be given credit for the time that you have
2 served.

3 Let Mr. Salazar please come forward. Likewise, Mr. Salazar,
4 same is true for you. You were young, your whole life ahead of
5 you. This is heartbreaking. It is heartbreaking for this
6 family. It is heartbreaking for your victim who struggles to be
7 able to articulate what happened to him on that night. You can
8 watch him lock up. My fear is that he lives there. His family,
9 they don't get those hugs ever again. And it's just
10 heartbreaking that you found yourself there.

11 Your family has lovely, wonderful things to say about you,
12 and I don't doubt that what they say is correct. I don't know
13 how or why you found yourself there at the site with these people
14 and with this intention. And it is a tragedy. It is a tragedy.

15 SENTENCE OF THE COURT

16 With regards to 2019-GS-18-0437, which is the indictment for
17 murder, I am going to commit you to the State Department of
18 Corrections for a period of 40 years. With regards to
19 2019-GS-18-0440, which is the indictment for attempted murder, I
20 am going to commit you to the State Department of Corrections for
21 a period of 30 years.

22 With regards to 2019-GS-18-0438, which is the indictment for
23 burglary in the first degree, I commit you to the State
24 Department of Corrections for a period of 40 years.

25 With regards to 2019-GS-18-0443, which is the indictment for

1 ill-treatment of animals, torture, I am going to commit you to
2 the State Department of Corrections for a period of five years.

3 And with regards to Indictment 2019-GS-18-0439, which is the
4 possession of a stolen vehicle, I commit you to the State
5 Department of Corrections for a period of five years.

6 These sentences will run concurrent.

7 And with regards to 2019-GS-18-0441, which is the indictment
8 for possession of a weapon during the commission of a violent
9 crime, I commit you to the State Department of Corrections for
10 period of five years. And this sentences will run consecutive.

11 You are to be given credit for the time that you have
12 served. Good luck to you, sir.

13 ATTORNEY CORNWELL: Thank you, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, that concludes
15 the matter.

16 With regards to our jurors, you didn't get your lunch. If
17 you wish, as I walked back in here Schmittty said, They didn't get
18 their lunch. You didn't get your lunch. Your lunch is here.
19 Anyone that wishes to remain and have lunch, please, retire back
20 to your former jury room for your lunch. I hate for you to miss
21 it if you want it.

22 But for your informational purposes, that does conclude
23 these matters. Any of you that have any questions -- y'all have
24 given us so much of your time. If anyone has any questions or
25 comments or suggestions about how we can do COVID better -- I'm

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	
COUNTY OF DORCHESTER	)	GENERAL SESSIONS
	)	
THE STATE OF SOUTH CAROLINA	)	NO. 2019-GS-180437; -438; -439;
	)	-440; -441; -442; -443
	)	
VS.	)	<u>TRANSCRIPT OF RECORD</u>
	)	Motion for New Trial and
POLO K. SALAZAR	)	Motion for Reconsideration
	)	of Sentence

B E F O R E:

The Honorable Diane S. Goodstein, Judge
Saint George, South Carolina

DATE: Friday, June 24, 2022

10:04 a.m.

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INDEXESPAGE:

Certificate of Reporter 25

INDEX TO WITNESSESDIRECT: CROSS: REDIRECT: RECROSS:WITNESSES:

(No witness called.)

INDEX TO EXHIBITSMARKED: RECEIVED:STATE'S EXHIBITS:

(No exhibits marked)

DEFENDANT'S EXHIBITS:

B - Letter of Jaquavious Washington 15 15

1 -- P R O C E E D I N G S --

2 THE COURT: Okay. Yes, ma'am, Ms. Cornwell.

3 ATTORNEY CORNWELL: Thank you, Your Honor. May it please
4 the Court.

5 THE COURT: Yes.

6 ATTORNEY CORNWELL: We do have two motion in his front of
7 Your Honor. I think that the first motion for a new trial would
8 be indicative of whether we need to hear the second motion for
9 reconsideration of sentence.

10 Your Honor, after this case was tried, several months later
11 Mr. Salazar's mother contacted me and indicated that Jaquavious
12 Washington had sent her a letter. It was a signed and notarized
13 letter where he was basically apologizing to her for what he said
14 against Polo, and how that affected his trial, and the fact that
15 he was found guilty of the charges.

16 Your Honor sat here through the trial. It was almost a
17 two-week trial, so you heard all of the evidence, and you knew
18 that our main defense was a third-party-guilt defense, that my
19 client was not actually the fourth person inside that home;
20 Jaquavious Washington was the fourth person inside that home.

21 I think that there was some evidence that was introduced
22 that was able to support that. The shoes that didn't match what
23 he was wearing, were not described to the jury. There was some
24 evidence of cellphone information that did place Jaquavious
25 Washington in the area at the time of the incident at the time of

1 the incident; that he had a personal relationship with one of the
2 victims in this case, had been to the victim's home before, so he
3 knew the victim and the victim's home.

4 There was some information we were not able to get out
5 because we were not able to put Jaquavious Washington on the
6 stand to testify and, because of hearsay exceptions, we were not
7 allowed to get into trying to impeach any of the testimony. We
8 could not talk to him because his lawyer would not let us speak
9 to him, which is her right to do. I believe the state also has
10 him on their witness list, but she would not let the state speak
11 to him either.

12 Certainly by the information that he gave law enforcement,
13 even if we had attempted to put him on the stand, to then declare
14 him an unavailable witness, we didn't have any information other
15 than what we were able to get through law enforcement that would
16 impeach his testimony to say that he was lying.

17 Obviously this is new information now. I believe that this
18 letter is something that we would be able to put him on the stand
19 to cross-examine him on, and to really be able to show a jury
20 what his involvement ultimately was, and what knowledge and
21 involvement my client had.

22 My client has maintained, throughout his arrest, and even
23 went to law enforcement. And while he wasn't completely truthful
24 with law enforcement, he told law enforcement, I was sitting in
25 the car. I was in the car. Now, he said that he dropped people

1 off to go see some girls, which was not accurate, but he's always
2 maintained that he was in the car, that he was in a car with
3 certain individuals that were co-defendants. He followed the
4 car, Jaquavious Washington and their girlfriend; that they went
5 to the house. He remained in the car; Jaquavious Washington's
6 girlfriend remained in the car; and everybody else went in the
7 house.

8 Based on this letter, I believe, and the fact that the jury
9 took two days of deliberation, they sent a letter saying that
10 they really found under the "hand of one, hand of all"; that they
11 weren't happy with what their finding was but, based on what the
12 one "hand of one, hand of all" was, they felt they had to do
13 that.

14 I think that the prejudicial nature of four men being
15 stopped in a vehicle immediately after the incident, four men
16 being identified by the of this victim, and four men being
17 presented to a jury did cause the jury to think automatically
18 that my client must have been that fourth person.

19 I think that this new information is substantial enough that
20 it could likely change a jury's decision if we were able to put a
21 face to this fourth person and be able to impeach him based on
22 the statement that he's given, which was a notarized statement,
23 based on the cellphone tower records, and having law enforcement
24 indicate what he said during his interviews. And based on that,
25 I think that a jury could find a different conclusion that he was

1 only merely present and not guilty of "hand of one, hand of all,"
2 because he was never inside that house.

3 I believe that it's substantial enough, under *State v.*
4 *Harris*, showing that this evidence would probably change the
5 result if a new trial was granted; that this evidence was
6 discovered after the trial; that it could not have been
7 discovered prior to the trial by the exercise of due diligence;
8 and it is material to the issue of guilt or innocence; and it's
9 not merely cumulative or impeaching.

10 I think that, given his complete defense and his ability to
11 present a complete defense with that third-party defense, the
12 fact that his attorney, that Mr. Washington's attorney, would not
13 allow us to speak with him so we, in no way, could get any of
14 this information from him before the trial, even with the
15 exercise of due diligence, that this is the type of information
16 that could change the outcome of a jury, particularly because the
17 jury did take so long and I believe that they were very
18 conflicted over, in particular, whether my client was inside that
19 house.

20 You know, we had asked for a severance so that we could try
21 each individual. There was also some information that Elijah
22 Green gave law enforcement where he states that he rode over
23 there with Jaquavious Washington and he was with two white guys
24 in a house and the white guy started shooting guns, which, while
25 again I don't think Elijah's Green's statement was completely

1 truthful to law enforcement, it still fits into he rode over with
2 Jaquavious Washington and Jaquavious Washington's girlfriend,
3 which is what he told law enforcement, and he went inside this
4 house. Meanwhile, Muanah Fortune and Devonte Major rode over
5 with my client, and they went inside that house. Jaquavious
6 Washington's girlfriend never left her car and never went inside
7 the house. My client never left the car and went inside the
8 house.

9 And I think that this letter, which was discovered after the
10 trial and would not have been discovered based on any due
11 diligence of myself, because I tried to speak with him prior to
12 trial, I think that it would have a significant impact; it could
13 substantially change the jury's decision. They could have found
14 that he was merely present; that he's not under the "hand of one,
15 the hand of all"; he did not know what the intent was there; he
16 did not know what happened in there; he was not part of any plan
17 of shooting anybody or firing any firearms. I think that, at
18 best, this new information could give light to other charges the
19 solicitor may pursue in lieu of the charges that were presented
20 at trial.

21 But I do think that this is significant under *State v.*
22 *Harris* for a new trial to be granted and to allow Mr. Salazar to
23 present to a jury of his peers this third-party guilt with
24 Jaquavious Washington on the stand, where the jury can actually
25 put a face, see that Mr. Washington does meet the physical

1 description given by the victims. Because I think that is
2 another discrepancy, that Mr. Washington is smaller than my
3 client. The physical descriptions that were given by the victim
4 in their testimony described somebody around five-eight,
5 five-nine. My client is six foot, he's a much bigger guy. I
6 think those discrepancies, that could be seen by a jury, would
7 have significant impact on the trial.

8 Based on this new evidence, Your Honor, we respectfully
9 request that a new trial be granted, and to allow Mr. Salazar to
10 present a complete defense, including a copy of this letter,
11 including putting Mr. Washington on the stand. If he then
12 asserts his Fifth Amendment right, I believe we could declare him
13 an unavailable witness and present impeaching testimony that the
14 state could then challenge at that point. But, it would allow
15 the jury to consider all aspects of the case, including his
16 defense that he's maintained this whole time of third-party
17 guilt. Thank you, Your Honor.

18 THE COURT: Thank you so much, Ms. Cornwell. Yes, sir,
19 Mr. Osborne.

20 ATTORNEY OSBORNE: Thank you, Judge. So it seems like the
21 crux of the whole motion is regarding this letter.

22 THE COURT: Yes.

23 ATTORNEY OSBORNE: I've taken the liberty of transcribing
24 this letter. It's hard for me to read. I don't know if you can
25 read it that well. It's not that his handwriting is that bad;

1 it's just that the way it's in there, it's kind of hard to read,
2 so I just typed it out.

3 THE COURT: All right. Thanks.

4 ATTORNEY OSBORNE: And so, all right. If Jaquavious is,
5 quote, unavailable, then he still has to meet the second element
6 of the unavailable witness, which would be that he's making a
7 statement against his own interest. I don't see anything in here
8 that's against his own interest.

9 The only thing that he's saying -- and this is really the
10 crux of this letter, the last few lines -- I feel bad for the lie
11 I told Polo Salazar had nothing to do with anything that he was
12 accused for. I know Polo Salazar had nothing to do with anything
13 that he was accused for. I know Polo Salazar is guilt free, but
14 I lied and put forth a false statement. He doesn't admit that he
15 was there. He also doesn't say that Polo wasn't there. He's
16 just saying that he put forth a false statement.

17 The false statement that he's referring to -- and this is
18 why we wanted to call him -- was on February the 4th of 2019, he
19 was interviewed by Detectives Driscoll and Davis at Hill-Finklea,
20 I think is what it's called.

21 And in that statement he said that -- and this is just me
22 summarizing, but it's audio and video recorded, he said that --
23 he got a phone call while -- but he was never on Bell Street.
24 That's where he lived -- he said that he got a phone call and
25 Devonte Major and Polo Salazar said that they would be coming by.

1 He said that when they got there -- then he goes to the house.
2 And he says when he got there, it was Devonte Major, Polo, Elijah
3 Green, as well as Muanah Fortune. He says that Polo gets out of
4 the car. He starts asking Polo about the car. He said that Polo
5 said that this is a stolen car, which it did turn out to be a
6 stolen car, and that we are about to go do a mission. Jaquavious
7 said, I took that to mean they're about to do a lick or a
8 robbery, and Jaquavious said he didn't want any part of it.

9 He then clarified that they were all out there, you know,
10 getting high.

11 THE COURT: Watch out. Just watch the pronouns. A lot of
12 he's.

13 ATTORNEY OSBORNE: Okay. Jaquavious then said that Elijah,
14 Polo, Devonte -- who's the other one? Elijah, Polo, Devonte and
15 Muanah were all out there getting high. He said that he then
16 goes to a gas station, which gets to the cellphone information.
17 The cellphone information does put him at a gas station.

18 THE COURT: Who's the he?

19 ATTORNEY OSBORNE: Jaquavious. And then he basically ends
20 it with, they tried to get him to go into the car, and he said
21 no, Jaquavious said no. And, Your Honor, if you would, if you'd
22 like me to, I can go through some of the evidence and just show
23 you a brief presentation, because I think some of the visuals
24 kind of help out a little bit.

25 Would you mind putting me in? And if it's okay, Judge, if

1 you wouldn't mind, I forgot to bring my clicker. If I could sit
2 down.

3 THE COURT: Sure.

4 ATTORNEY OSBORNE: Okay. So the date of the incident,
5 Judge, was on January the 27th of 2019. The location of the
6 incident was [REDACTED] Myrtle Place. The victims that were present in
7 the home were Marcus Porter, David Swibaker and the murder
8 victim, Joe Weaver.

9 And first, Judge, I would refresh your memory -- I know it's
10 been over a year now -- this is map of Robynwyn. This is the
11 subdivision that the incident occurred. This would be [REDACTED] Myrtle
12 Place. The 911 call came in at 12:03. And if you'll recall,
13 Your Honor, Marcus Porter testified that when the individuals
14 left his home, he then ended up going across the street and had a
15 neighbor call 911 for him. The vehicle was located, or first
16 seen, by Summerville police in the same neighborhood just down
17 the road. This would have been about four minutes later.

18 Now, why this is significant is because we had
19 Detective/Sergeant Jonathan Davis go out and drive that location
20 from the incident location to the location at which they first
21 saw the vehicle. He said it took him about three minutes to make
22 that trip. Our position, and what we presented, was that there
23 was evidence that they ran out the back door. All four of the
24 individuals, when they were stopped in the car, all had mud on
25 their shoes. If they were to make that run, get into the car,

1 and then get into this location, it would be about four minutes.

2 And this is just a photograph showing mud on each one of the
3 individual's shoes. If I remember correctly, I think Polo
4 Salazar was the top left, the gold shoes.

5 Summerville police ended up get behind the car, immediately
6 looped around on it. The car ends up taking a left on 78, and
7 this is when they end up -- the long pursuit that then ensued.
8 This is when Corporal Cramer first got behind the car with no
9 plate.

10 And you know, and I don't think it was insignificant that
11 Polo was the driver of this vehicle that led for such a long --
12 speeds in trying to evade arrest. And I think we introduced
13 testimony that many times he was going over 100 miles per hour.

14 This is the driver, the defendant, Polo Salazar. He got out
15 of the vehicle; Muanah Fortune; Devonte Major; and Elijah Green.

16 Inside the vehicle, Judge, at the driver's floorboard --
17 yeah, floorboard -- was a glove. When we did the DNA on that
18 glove, it came back to a very high probability that Muanah -- or,
19 that Polo Salazar contributed to the DNA mixture that was found
20 inside that glove. Well, another area of significance in the
21 vehicle was inside the vehicle we found this Gucci bag. Inside
22 the bag was the defendant Polo Salazar's ID. Also located inside
23 that vehicle was loose rounds of .380 Hornady ammunition. That
24 became significant when they found the guns.

25 So, along the path that the vehicle fled, they had this

1 jumpsuit. It's true that this jumpsuit was never part of the
2 description, but the fact that they threw it out of the vehicle
3 while they were running was significant. And also significant,
4 we had a knife located -- rolled up inside this jumpsuit, but
5 also, this second half of the glove that was found inside the
6 vehicle.

7 THE COURT: The second half of the glove of another glove?

8 ATTORNEY OSBORNE: Another glove.

9 THE COURT: That matched the one that was on the floorboard
10 on the driver's side?

11 ATTORNEY OSBORNE: Yes, ma'am.

12 THE COURT: Okay.

13 ATTORNEY OSBORNE: And this photograph here just illustrates
14 that. And this goes back to the guns that were recovered. When
15 the car came out of Robynwyn, the suspect vehicle then took a
16 left on 78. This photograph here illustrates that point, because
17 when the officers came back, they recovered four pistols. Four
18 people in the car; four pistols.

19 And I'll just go ahead and skip ahead. So this right here,
20 this illustration here points out the guns to the ammunition, or
21 to the fired projectiles, that were found on the scene, and I
22 think this sort of comes -- this does come directly to the "hand
23 of one." So we were attributing and arguing, and I think the
24 evidence does show, the .380 rounds that were found in the bag
25 that had Polo Salazar's ID came back to -- well, in the Jimenez

1 .380 pistol that was recovered on the side of the road, those
2 rounds were the same rounds. There was no evidence that the .380
3 was actually fired. We, of course, argue that the .380 was used
4 in the crime, and they got rid of it. Four people; four guns.

5 The Smith & Wesson .380 revolver, three live rounds in the
6 chamber, three spent rounds. There were three projectiles
7 recovered from the scene that were consistent with the .380, so
8 the .380 certainly looks like it was fired.

9 The 9-millimeter pistol, the Springfield Armory 9-millimeter
10 pistol, came back matching to 7 shell casings found at the scene.
11 Plenty of evidence that that was fired. The other 9-millimeter,
12 there was no evidence that that was fired.

13 So again, I do agree with Ms. Cornwell there. Our theory
14 was that there were four people involved in the crime, all acting
15 together to perpetrate the crime. However, there were only two
16 shooters.

17 And just the other point of clarification. Under *Harris*,
18 it's a "probably would have", not a "could have" standard. And
19 this "probably" would not have changed anything. We wanted to
20 call Jaquavious. We would have impeached Jaquavious had he
21 denied that Polo and the three other defendants came by his house
22 prior to the murder looking to do a lick, or a mission, as he
23 told the police. I think had we had Jaquavious testify, it would
24 have just been more evidence against Polo, not less evidence.

25 So, Your Honor, for that reason, we'd ask you to deny their

1 request.

2 THE COURT: Thank you so much.

3 ATTORNEY OSBORNE: Thank you, Judge.

4 THE COURT: Yes, ma'am. Response?

5 ATTORNEY CORNWELL: Thank you, Your Honor. In looking at
6 the letter -- and I apologize to Mr. Osborne, I did not get the
7 original letter until this morning, it was scanned to me. The
8 original letter is what I gave you, which hopefully it doesn't
9 cut off on the end. I think that was just the transmission that
10 was sent to me, so that is my apology. I would ask that that
11 letter be Court's exhibit or defense exhibit to this motion.

12 THE COURT: We can make it a defense exhibit. Not a
13 problem. If you'll pass the original.

14 ATTORNEY CORNWELL: I gave the original to you so you could
15 review it.

16 THE COURT: Okay. I'm sorry. All right. We'll mark that.

17 ATTORNEY CORNWELL: But in that, I do believe that there is
18 some --

19 THE COURT: Hold on one second to make sure that that
20 happens. So that will be Defense Salazar's No. 1.

21 (Defendant Salazar Exhibit 1 is marked for identification
22 and admitted into the record.)

23 THE COURT: Yes.

24 ATTORNEY CORNWELL: That there is a self-incriminating
25 aspect to Jaquavious Washington's letter where it does indicate

1 that he was guilty of some part of this crime as well. He
2 indicates that the reason that he talked to both Driscoll and
3 Davis is because they told him they would help him out on his
4 sentencing, getting a lesser sentence, and that he was on drugs
5 and he was itching for his freedom, so he was going to tell them
6 whatever they wanted to hear.

7 Obviously the only way that he would know that Polo was
8 guilt-free and not involved and was accused in all this, and the
9 fact that he was itching for his freedom and willing to make lies
10 against Polo, is because he was there, and he met with them
11 before, he took them over there. He was the fourth person inside
12 that house. He says that he knows that Polo is not guilty of
13 anything that he was accused of because Polo was not inside that
14 house, he was inside the car waiting.

15 We talked about the gloves. It was -- this is January,
16 December. It was incredibly cold. It's not unusual for somebody
17 to wear gloves during that time of year and take those gloves off
18 when they're in a heated car, driving. None of the victims
19 testified that anybody was wearing gloves. They talked about
20 masks. They talked about the shoes. But I specifically asked
21 each victim, do you recall gloves, do you remember anybody
22 wearing gloves, and any situation was no. So the fact that
23 there's a glove that matches one that has Polo Salazar's DNA on
24 it that's found thrown in with the victim's stuff, well, we know
25 that Devonte Major and Elijah Green were in the backseat throwing

1 items out of the back of the car. They're gathering things up
2 from the back and throwing them out. That doesn't mean that,
3 because the glove was there, automatically puts him inside that
4 home.

5 Again, the fact that there were four guns, the state has
6 already admitted that the gun they believe was my client's was
7 never fired. Again, no indication. Just because somebody is in
8 possession of a firearm; that they went inside a home with a
9 firearm; and they used a firearm -- in fact, they say "point
10 blank," this firearm was never fired; it was not used -- when it
11 comes to the people who fired, it was Major and Green.

12 The state makes a big point on this car chase. But if Your
13 Honor will recall, at the beginning of that video, right as law
14 enforcement pulls up behind my client, he goes to the stop light,
15 he starts to pull over and stop. And I think we brought this
16 point out through law enforcement. He would testify -- or, what
17 we told the jury is, at that point you've got people in the back
18 that know they've killed somebody, and they're saying, Don't
19 stop; don't stop; go; go; go. He's got people with guns in his
20 car. He takes off. That is what I mean when I think that there
21 are certain charges that the state could pursue.

22 But I think that this letter and the fact they said they
23 wanted to put him on the stand, they thought that would help
24 them; I wanted to put him on the stand. I think that this letter
25 would help me. I think that the jury does need to hear that;

1 that the state has the opportunity to put him on the stand; I
2 have the opportunity to put him on the stand now.

3 They have their evidence through the videos, and I've now
4 got evidence where he says "point blank", my client was not
5 there; was not guilty of the crimes that he's accused of. I
6 think that that is incredibly important for a jury to see, and to
7 let a jury consider all of the evidence. The state can put up
8 the evidence that they want to put up, with this new evidence
9 intact, and make their argument, but it at least allows my client
10 to present his complete defense, and show and put a face, and put
11 a confession to the crime saying, This man is not guilty because
12 he did not do this; I lied about him; I was itching to get my own
13 freedom; I, you know, was being told as long as I told on Polo,
14 I'd get out, and so that's what I did; but now that I've realized
15 what I subjected him to, I feel bad. We were beefing. I through
16 him under the bus. Well, the reason they were beefing is because
17 of what happened.

18 So again, I think that that is new evidence. I think that
19 it was something that will probably change the result if a new
20 trial were granted, and that it was not discovered prior to trial
21 despite the exercise of due diligence, and it is material to
22 guilt or innocence.

23 Again, this wasn't an accessory after the fact trial; this
24 wasn't a possession of a firearm trial, or an unlawful possession
25 of a firearm trial, I should say; and I think that, based on what

1 the evidence, clearly this new evidence, would show, those are
2 things that could be argued to a jury, that could be considered
3 by a jury for a jury to probably, and possibly, find not guilty
4 on murder, not guilty on kidnapping, and not guilty on the
5 burglary based on the mere presence.

6 There's never been any testimony that this was a concerted
7 conspiracy to go and kill anybody, and that so I believe that the
8 state could present their evidence, allow Mr. Salazar to present
9 this new evidence, to put Jaquavious Washington on the stand, and
10 to support what I believe the jury struggled with in the first
11 trial in whether or not my client was actually the fourth person
12 in there and whether he knew what was happening.

13 We argue that he was in the car. He doesn't match the
14 physical description of the witness/the victim testimony. His
15 shoes don't match the physical description. And I believe that
16 if a jury were able to see a person that does match that
17 description, that could have been wearing shoes that were
18 described by the victim, that could have been that fourth person,
19 as opposed to just seeing four people in a car that were pulled
20 over and assuming those four people in the car were the four
21 people inside the home, this evidence sheds new light and gives
22 new consideration for a jury that could probably change the
23 outcome.

24 And so we would just respectfully request a new trial and a
25 new opportunity to present that evidence to a jury.

1 THE COURT: Thank you so much. Anything further from
2 anyone?

3 ATTORNEY OSBORNE: I can, if I need to, Judge, but, I mean,
4 I think it's not confession to a crime.

5 THE COURT: It's not what?

6 ATTORNEY OSBORNE: Jaquavious Washington's letter is clearly
7 not a confession to a crime. You read the letter, and you're
8 left with the impression Jaquavious thinks his statement that
9 police convict Polo, he's recanting that statement.

10 THE COURT: I understand. All right. I've got it under
11 advisement. You've got another motion, so, about that one?

12 ATTORNEY CORNWELL: In the event Your Honor is not persuaded
13 to grant a new trial, we would respectfully request Your Honor
14 reconsider the sentence in this case.

15 THE COURT: Okay.

16 ATTORNEY CORNWELL: The sentence in this case was 40 years
17 on the substantive charges, with a consecutive five years on the
18 possession of a weapon during the commission of a violent crime.
19 Those sentences were handed down during the first trial.
20 Subsequent to that first trial there was a second trial for
21 Mr. Green and Mr. Major.

22 The state did reach out to my office and wanted to see if
23 Mr. Salazar would be willing to testify in those trials,
24 understanding that he would obviously -- if he testified, that
25 could be used against him while his appeal was pending, and that

1 obviously he would be labeled a snitch in that situation.

2 I talked to my client and we agreed that, you know, if they
3 wanted him to testify, he could, but he can only testify to what
4 he knows. He was in the car. He can say who was in the car with
5 him and what happened afterwards, but he was never in that house,
6 so he can't testify as to what happened in that house. He can
7 only testify as to being in the car; who was in the car with him.

8 The state determined that they did not want to put him on
9 the stand at that point. However, he was willing to cooperate
10 with the state and assist the state in testifying truthfully. I
11 believe that my understanding is the state, in deciding not to
12 bring my client up, still had to advise opposing counsel, because
13 my client was on the witness list to opposing counsel; therefore,
14 Mr. Green and Mr. Major were aware that my client could be
15 testifying against them, which, obviously, in the SCDC system,
16 can put him at risk and put a target on his back.

17 I believe that you were able to hear, again, from the jury
18 that they did not feel that my client was the shooter, was the
19 one that, you know, necessarily committed the actual offense of
20 killing somebody but, because of the "hand of one, hand of all,"
21 they felt they had to convict.

22 It is our position that, based on his willingness to help
23 the state, with this newly discovered evidence, that he does sort
24 of indicate that maybe what he was saying about being in the car
25 and just being in the car could be viable.

1 I would ask Your Honor to respectfully reconsider the
2 sentence and sentence him to something closer to the minimum of
3 30 years based on his willingness to cooperate, based on what he
4 has maintained has been his role in this incident the entire
5 time.

6 I know that hopefully, after hearing the second trial and
7 seeing the evidence in that, that solidifies that, no matter what
8 you think, my client never fired a weapon that night.

9 THE COURT: Uh-huh.

10 ATTORNEY CORNWELL: And based on that, again, I would
11 respectfully request that you reconsider your sentence and give
12 consideration to the fact that he was available to the state; he
13 indicated what he would be able to testify to the state. And
14 because of that, he does have a target on his back in SCDC, and I
15 believe that is significant.

16 So I would first ask for you to grant a new trial.

17 THE COURT: Sure.

18 ATTORNEY CORNWELL: But if you are not inclined to do that,
19 we would respectfully request that you reduce his sentence to
20 something closer to the mandatory minimum.

21 THE COURT: Thank you so much.

22 ATTORNEY OSBORNE: The only thing I would say, Judge -- and
23 I only mention this because Ms. Cornwell mentioned that -- and
24 Jaquavious actually says it in his letter -- that there was
25 beefing going on between Polo and Jaquavious, and the beefing was

1 as a result of Jacquavious's statement against Polo. There was
2 information -- obviously never came out during trial because this
3 was just information -- but there was information that Jacquavious
4 was shot by Polo prior to this incident, and that's what the
5 beefing was all about. And that's what he's talking about.

6 I do sympathize with the whole idea of the snitching. That
7 gets around. There's no doubt about that. We definitely decided
8 not to put him on the stand once Ms. Cornwell told me what she
9 anticipated he would testify to. My thought on it, quite
10 frankly, was 12 people didn't buy that story before. Why would
11 12 new people buy that story? I thought there was an
12 overwhelming amount of evidence to indicate that he was inside
13 the car. Had he admitted to that, that might have changed
14 things, but he's still not saying that.

15 THE COURT: You mean that he was inside the house, not
16 inside the car?

17 ATTORNEY OSBORNE: Right, inside the house.

18 THE COURT: Right.

19 ATTORNEY OSBORNE: And that does bring up another thing
20 about description, and I forgot to mention this earlier. It's my
21 recollection that both Mr. Porter and Mr. Swibaker indicated that
22 they really weren't able to provide much of a description of the
23 fourth individual that was inside the house, which is short of
24 what we were -- they were good on the shooters, Elijah Green and
25 Devonte Major, but not so good on the other ones, which makes

1 sense. They're the ones that are firing the gun.

2 The victims' family are here. We have Marcus Porter here.
3 We have Joe Weaver's mother, Brenda Griffin, Joe Weaver's dad,
4 Joe Weaver, Sr., as well as other family members. They do not
5 wish to address the Court, but they do think that the sentence of
6 46 years was appropriate given all the facts. Thank you, Judge.

7 THE COURT: Thank you. Clearly there are other folks that
8 are present here on behalf of Mr. Salazar as well; correct?

9 ATTORNEY CORNWELL: There are, Your Honor. His mother and
10 other family members are here in support of him.

11 THE COURT: Sure.

12 ATTORNEY CORNWELL: You did hear from his mother at
13 sentencing. I don't think that she would have anything new to
14 say other than that she loves her son, and she would hope -- he's
15 a good boy, and she would just ask that Your Honor reconsider the
16 sentence.

17 THE COURT: Thank you so much. Thank you. Thank you all.
18 I got it. Thank you for your arguments. What I will do is,
19 nobody's changed their email; right?

20 ATTORNEY CORNWELL: No, Your Honor.

21 THE COURT: Well, it would be my intention to review these
22 matters, and I will email you and ask one of you to draft me one
23 order, for sure. And with regards to the other, if we do -- if
24 there is a resentencing, then we will re-adjourn for that
25 resentencing.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

FIRST JUDICIAL CIRCUIT

2022 JUL 25 AM 8:56

STATE OF SOUTH CAROLINA

CHERYL GRAHAM
CLERK OF COURT

DORCHESTER COUNTY

Arrest Warrant #: 2019A1820500091, 2019A1820500096,
2019A1820500098 2019A1820500103, 2019A1820500106,
2019A1820500108

vs.

POLO KEOKI SALAZAR

Indictment #: 2019GS18-0437, 0438, 0439,
0440, 0441, 0443

DEFENDANT.

RECEIVED

Aug 10 2022

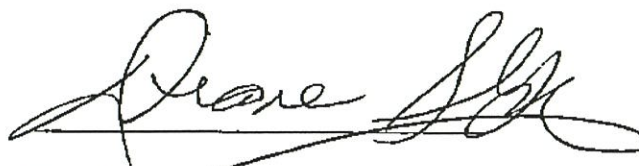
SC Court of Appeals

**ORDER DENYING DEFENDANT'S MOTION
FOR A NEW TRIAL**

This matter came before the court and a hearing was held on June 24, 2022, pursuant to the Defendant's Motion for a New Trial. The Defendant was present along with his Attorney Ashley Cornwell and Senior Litigation Counsel David Osborne was present on behalf of the State.

The thrust of the Defense's argument was that a post-trial statement from Jaquavious Washington was an admission to his involvement in the murder. After hearing arguments from both sides, the court found Mr. Washington's post-trial statement was not any admission as to any involvement in the murder. Furthermore, the court found there was substantial evidence from which the jury made its determination of the Defendant's guilt. Therefore, the Defendant's Motion for a New Trial is denied.

IT IS SO ORDERED!



The Honorable Diane Goodstein
First Judicial Circuit

July 21, 2022

Saint George, South Carolina

WITNESSES

Phillip M Moy

Summerville Police Department

19-006360

ARREST WARRANT NUMBER

2019A1820500091

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. 2019GS18-0437
The State of South Carolina
 County of DORCHESTER

Defendant

COURT OF GENERAL SESSIONS

September 30, 2019 TERM

 THE STATE
 vs.

Polo Keoki Salazar

Defendant

Witness:

C.C.C. PLS. AND G.S.

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.

 I hereby appear in my own proper person
 and plead guilty to the within indictment or
 to

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

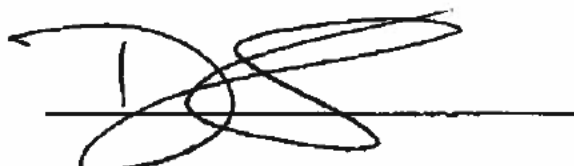
INDICTMENT
2019GS18-0437

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, Polo Keoki Salazar, 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.



Donald N. Sorenson, Solicitor

WITNESSES

Philip M Moy

Summerville Police Department

19-006360

ARREST WARRANT NUMBER

2019A1820500096

Arrested: January 28, 2019

**ATTORNEY AT LAW
TRUE BILL**


Foreperson of Grand Jury
Date: September 28, 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019GS18-0438
The State of South Carolina
 County of DORCHESTER

Defendant

COURT OF GENERAL SESSIONS**September 30, 2019 TERM**
THE STATE
 vs.

Polo Keoki Salazar

Defendant

Witness:

C.C.C. PLS. AND G.S.

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.

I hereby appear in my own proper person and plead guilty to the within indictment or to

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2019GS18-0438

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, Polo Keoki Salazar, 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; and/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

WITNESSES

Philip M Moy

Summerville Police Department

19-006360

ARREST WARRANT NUMBER

2019A1820500098

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. 2019GS18-0439

The State of South Carolina
County of DORCHESTER

Defendant

COURT OF GENERAL SESSIONS

September 30, 2019 TERM

THE STATE
vs.

Polo Keoki Salazar

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for

Possess, conceal, sell, or dispose of
stolen vehicle, value more than \$2,000
but less than \$10,000

SC Code: 16-21-0080

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

I hereby appear in my own proper person
and plead guilty to the within indictment or
to

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2019GS18-0439

As a Court of General Sessions, convened on September 26, 2019 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESS, CONCEAL, SELL, OR DISPOSE OF STOLEN VEHICLE, VALUE MORE
THAN \$2,000 BUT LESS THAN \$10,000**

That in Dorchester County, South Carolina, on or about January 28, 2019, the defendant, Polo Keoki Salazar, did knowingly and unlawfully possess, receive, conceal, sell or dispose of a vehicle, described as a 2007 Honda CRV, with an approximate value of \$6,000.00 and the defendant was not entitled to possession of the vehicle and had knowledge that the vehicle had been stolen or converted unlawfully. This offense in violation of Section 16-21-80 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, appearing to be "Donald N. Sorenson", written over a horizontal line.

Donald N. Sorenson, Solicitor

WITNESSES

Phillip M Moy

Summerville Police Department

19-006360

ARREST WARRANT NUMBER

2019A1820500103

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. 2019GS18-0440

The State of South Carolina
 County of DORCHESTER

Defendant

COURT OF GENERAL SESSIONS

September 30, 2019 TERM

 THE STATE
 vs.

Polo Keoki Salazar

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for

Attempted Murder

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

I hereby appear in my own proper person and plead guilty to the within indictment or to

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

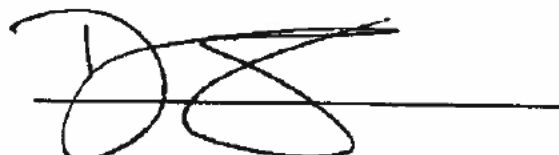
INDICTMENT
2019GS18-0440

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, Polo Keoki Salazar, 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, appearing to be 'DS', written over a horizontal line.

Donald N. Sorenson, Solicitor

WITNESSES

Phillip M Moy

Summerville Police Department

19-006360

ARREST WARRANT NUMBER

2019A1820500106

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. 2019GS18-0441

The State of South Carolina
County of DORCHESTER

Defendant

COURT OF GENERAL SESSIONS

September 30, 2019 TERM

THE STATE
vs.

Polo Keoki Salazar

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment forPossession 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.I hereby appear in my own proper person
and plead guilty to the within indictment or
to

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

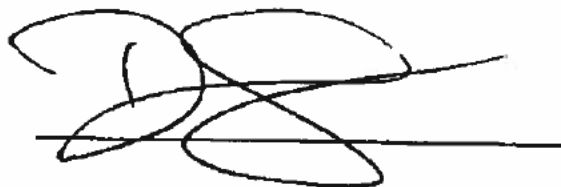
INDICTMENT
2019GS18-0441

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, Polo Keoki Salazar , 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.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Donald N. Sorenson, Solicitor

WITNESSES

Philip M Moy

Summerville Police Department

18-006380

ARREST WARRANT NUMBER

2019A1820500108

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. 2019GS18-0443

The State of South Carolina
 County of DORCHESTER
COURT OF GENERAL SESSIONS

September 30, 2019 TERM

THE STATE
 vs.

Polo Keoki Salazar

Indictment for
 III 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.

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF DORCHESTER

2019GS18-0443

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, Polo Keoki Salazar, 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

1294

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Dorchester

VS.

Polo Keoki Salazar

AKA:

Race: BLACK Sex: M Age: 24

DOB: -1996 SS#: [REDACTED]

Address: Ball Park Rd

City, State, Zip: Seabrook, SC 29940-3629

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

*CDL ☐ CMV ☐ Hazmat ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS18-0437

A/W#: 2019A1820500091

Date of Offense: 1/28/2019

S.C. Code § 16-3-10

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-10

of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Osborne, David L

101325

SC Bar#

Defendant

Cornwell, Ashley
Attorney for Defendant

SC0076577

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years 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.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	
\$14-1-211(A)(2) (DUI Surcharge)	\$100	
\$56-5-2095 (DUI Assessment)	\$12	
\$56-1-286 (DUI Breath Test)	\$25	
Proviso (Public Def. Probation)	\$500	
\$14-1-212 (Law Enforce. Funding)	\$25	
\$14-1-213 (Drug Court Surcharge)	\$150	
\$50-21-114(B)(1) (Breath Test Fee)	\$50	
\$56-5-2942(J) (Vehicle Assessment)	\$40-fee	
3% to County (if paid in installments)	\$	

TOTAL

Clerk of Court: Deputy Clerk

Court Reporter:

SCCA-217 (04/2018)

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code:

Sentence Date:

Deane
217
5-19-2021

COUNTY OF
STATE

Dorchester

VS.

Polo Keoki Salazar

AKA:

Race: BLACK Sex: M Age: 24

DOB: 1996 SS#: [REDACTED]

Address: Ball Park Rd

City, State, Zip: Seabrook, SC 29940-3629

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

*CDL ☐ CMV ☐ Hazmat ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE#: 2019GS18-0438

A/W#: 2019A1820500096

Date of Offense: 1/28/2019 - [REDACTED]

S.C. Code § 16-11-311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Osborne, David L.

101325

SC Bar#

Defendant

Cornwell, Ashley

Attorney for Defendant

SC0076577

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years 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.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5-19-2021☐ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)

\$100

§14-1-211(A)(1) (Conv. Surcharge)

\$100

§14-1-211(A)(2) (DUI Surcharge)

\$12

§56-5-2995 (DUI Assessment)

\$25

§56-1-286 (DUI Breath Test)

\$500

Proviso (Public Def/Probation)

\$25

§14-1-212 (Law Enforce. Funding)

\$150

§14-1-213 (Drug Court Surcharge)

\$50

§50-21-114(BUI Breath Test Fee)

\$40/ea

§56-5-2942(J) (Vehicle Assessment)

\$3.75

3% to County (if paid in installments)

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

1296

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Dorchester

VS.

Polo Keoki Salazar

INDICTMENT/CASE#: 2019GS18-0439

A/W#: 2019A1820500098

Date of Offense: 1/28/2019

S.C. Code § 16-21-0080

CDR Code #: 3467

AKA:

Race: BLACK Sex: M Age: 24

DOB: 1996 SS#: [REDACTED]

Address: Ball Park Rd

City, State, Zip: Seabrook, SC 29940-3629

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

*CDL ☐ CMV ☐ Hazmat ☐

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

☒ CONVICTED OF or ☐ PLEADS

TO: Possess, conceal, sell, or dispose of stolen vehicle, value more than \$2,000 but less than \$10,000

in violation of § 16-21-0080 of the S.C. Code of Laws, bearing CDR Code # 3467

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

APPEAR:

Osborne, David L

101325

SC Bar#

Defendant

Cornwell, Ashley
Attorney for Defendant

SC0076577

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 or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years 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.

☒ CONSECUTIVE to sentence on: 5-19-2021☒ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$
\$
\$100
\$100
\$12
\$25
\$500
\$25
\$150
\$50
\$40/ea

\$
\$
\$100
\$100
\$
\$
\$
\$25
\$
\$
\$3.75
\$128.75

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge: _____

Judge Code: 2113

Sentence Date: 5-19-2021

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (04/2018)

COUNTY OF
STATE

Dorchester

VS.

Polo Kenki Salazar

AKA:

Race: BLACK Sex: M Age: 24

DOB: 1996 SS#: [REDACTED]

Address: Ball Park Rd

City, State, Zip: Seabrook, SC 29940-3629

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

*CDL ☐ CMV ☐ Hazmat ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Murder

INDICTMENT/CASE#: 2019GS18-0440

A/W#: 2019A1820500103

Date of Offense: 1/28/2019 - [REDACTED]

S.C. Code § 16-3-29

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 101325

SC0076577

Osborne, David L

SC Bar#

Defendant

Cornwell, Ashley
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years 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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5-19-2021☐ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§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	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 3.75
3% to County (if paid in installments)	\$	\$ 128.75

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Cathy Provost

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 3112Sentence Date: 5-19-2021

1298

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Dorchester

VS.

Polo Keoki Salazar

INDICTMENT/CASE#: 2019GS18-0441

A/W#: 2019A1820500106

Date of Offense: 1/28/2019

S.C. Code § 16-23-490

CDR Code #: 0549

AKA:

Race: BLACK Sex: M Age: 24

DOB: 1996 SS#: [REDACTED]

Address: Ball Park Rd

City, State, Zip: Seabrook, SC 29940-3629

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

*CDL ☐ CMV ☐ Hazmat ☐

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

☒ CONVICTED OF or ☐ PLEADS

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

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

101325

SC0076577

Osborne, David L

SC Bar#

Defendant

Cornwell, Ashley
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 or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years 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.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 5-19-2021☒ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5 %)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114 (DUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

Judge Code:

Sentence Date:

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

COUNTY OF Dorchester
 STATE VS.
Polo Keoki Salazar
 AKA:
 Race: BLACK Sex: M Age: 24
 DOB: 1996 SS#: [REDACTED]
 Address: Ball Park Rd
 City, State, Zip: Seabrook, SC 29940-3629
 DL#: [REDACTED] SID#: [REDACTED]

*CDL ☐ CMV ☐ Hazmat ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Animals / Ill treatment of animals in general, torture

INDICTMENT/CASE#: 2019GS18-0443

A/W#: 2019A1820500108

Date of Offense: 1/28/2019 - [REDACTED]

S.C. Code § 47-1-40(B)

CDR Code #: 2804

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in 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(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST: [Signature] 101325 SC0076577
Osborne, David L SC Bar# Defendant Comwell, Ashley SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years
 and/or to pay a fine of \$ [REDACTED]; provided that upon the service of 5-19-2021 days/months/years and/or payment
 of \$ [REDACTED] plus costs and assessments as applicable*; the balance is suspended with probation for [REDACTED]
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5-19-2021

☒ 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.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED] [REDACTED] days/hours Public Service Employment

Payment Terms: [REDACTED]

☐ Set by SCDPPPS [REDACTED]

Recipient: [REDACTED]

*Fine:	\$	
§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	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL	\$	\$ <u>128.75</u>

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. [REDACTED]

May serve W/E beginning [REDACTED]

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ [REDACTED] beginning [REDACTED]

\$ [REDACTED] paid to Public Defender Fund

Other: [REDACTED]

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

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (04/2018)

Presiding Judge [Signature]

Judge Code: 2172

Sentence Date: 5-19-2021

1300

RECEIVED

Nov 17 2023

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Breen R. Stevens
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 17th day of November, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Nov 17 2023
SC Court of Appeals

Appeal from Dorchester County

Honorable Diane S. Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

POLO K. SALAZAR,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) this 17th day of November, 2023.



Breen R. Stevens
Appellate Defender

Leverett, Scott

From: Leverett, Scott
Sent: Friday, November 17, 2023 3:24 PM
To: jmaye@scag.gov
Cc: SC - D'ALESSIO DONNA; Stevens, Breen
Subject: Polo K. Salazar - Record on Appeal - Appellate Case No. 2022-001066
Attachments: Polo K. Salazar - Record on Appeal VOL 1 - Appellate Case No. 2022-001066.pdf

Dear Mr. Maye,

Attached please find a copy of the Record on Appeal (Volume 1) in the above referenced case that is being filed today, November 17, 2023, with the Court of Appeals. I will send the other two volumes and Transportation Order in separate emails.

-Scott Leverett
Admin. Asst. for Breen Stevens
Appellate Defense

Leverett, Scott

From: Leverett, Scott
Sent: Friday, November 17, 2023 3:28 PM
To: jmaye@scag.gov
Cc: SC - D'ALESSIO DONNA; Stevens, Breen
Subject: Polo K. Salazar - Record on Appeal - Appellate Case No. 2022-001066 (2)
Attachments: Polo K. Salazar - Record on Appeal VOL 2 - Appellate Case No. 2022-001066.pdf

Dear Mr. Maye,

Attached please find a copy of the Record on Appeal (Volume 2) in the above referenced case that is being filed today, November 17, 2023, with the Court of Appeals. I will send the last volume and Transportation Order in a separate email.

-Scott Leverett
Admin. Asst. for Breen Stevens
Appellate Defense

Leverett, Scott

From: Leverett, Scott
Sent: Friday, November 17, 2023 3:29 PM
To: jmaye@scag.gov
Cc: SC - D'ALESSIO DONNA; Stevens, Breen
Subject: Polo K. Salazar - Record on Appeal - Appellate Case No. 2022-001066 (3)
Attachments: Polo K. Salazar - Record on Appeal VOL 3 - Appellate Case No. 2022-001066.pdf; Polo K. Salazar - Proposed Transportation Order - Appellate Case No. 2022-001066.pdf

Dear Mr. Maye,

Attached please find a copy of the Record on Appeal (Volume 3) in the above referenced case that is being filed today, November 17, 2023, with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Breen Stevens
Appellate Defense