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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Certiorari to the Court of Appeals
Appeal from Richland County
Honorable DeAndrea G. Benjamin Circuit Court Judge

Appellate Case No. 2026-002000

THE STATE, ... PETITIONER,

v.

MICAH CHRISTIAN SYLVE BROWN, ...RESPONDENT.

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Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001605

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS NOS. 10-14 (PHOTOS OF THE GUN); STATE’S EXHIBIT NO. 64
(SEcurity CAMERA VIDEO); STATE’S EXHIBIT NO. 65 (AERIAL PHOTO OF
WHISPERING PINES ROAD); AND STATE’S EXHIBIT NO. 73 (CHAT MESSAGE).**

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2019-GS-40-01951
		2019-GS-40-01952
		2019-GS-40-01953
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICAH BROWN,	)	
	)	
DEFENDANT,	)	

July 11, 2022
Columbia, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

APPEARANCES:

JUDAH VANSYKEL, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Who all do you want to leave, Mr.
2 VanSyckel?

3 MR. VANSYCKEL: Huh?

4 THE COURT: Who all do you want to leave?

5 MR. VANSYCKEL: I guess everybody but the Clerk's
6 Office and security. I don't think we need Probation.

7 THE COURT: Clerk's office and security.

8 Oh, that's my Rule 403 person, you're exempted from
9 the exclusion.

10 MR. VANSYCKEL: Your Honor, I'd ask that he be sworn
11 to confidentiality.

12 THE COURT: Who is that behind you?

13 INTERN: Intern.

14 THE COURT: Intern at the Public Defender's Office.

15 MR. VANSYCKEL: If you swear them to confidentiality,
16 it would probably be good for the practice of law for them
17 to be here, as well.

18 THE COURT: All right. Raise your right hands.

19 (Both were sworn to confidentiality.)

20 THE COURT: And, Your Honor, I think we have to get
21 Ms. Rischbieter out here, too.

22 MS. RISCHBIETER: I apologize.

23 THE COURT: And her guy.

24 MS. RISCHBIETER: Sorry about that.

25 THE COURT: That brings the day to a close when we

1 start clearing it out.

2 Yes, sir.

3 MR. VANSYCKEL: Judge, this is Micah's motion. He
4 wants to fire me. I think he has his reasons for wanting
5 to do that. We've got trial scheduled for July 31st --
6 excuse me, I apologize, October 31st.

7 THE COURT: What's his name again?

8 MR. VANSYCKEL: Micah Brown.

9 THE COURT: Michael Brown?

10 MR. VANSYCKEL: Micah.

11 THE COURT: All right.

12 MR. VANSYCKEL: And Micah has a lot of charges. What
13 we're going to be going to trial on is two murders and an
14 attempted murder, and then there's a separate incident
15 that involves a burglary first and some other charges, but
16 we've all been mostly focused on the two murders with an
17 accompanied attempted murder.

18 Those are the three cases that are being set for the
19 trial. Those are the ones with the charge. There is a
20 codefendant, who is not currently set for trial, who's
21 being represented by Jack Swerling's office, at least,
22 that's the information that I've got. And I am appointed
23 in this matter. Previously, he was represented by Tracy
24 Pinnock and I have now had the case for a while.

25 THE COURT: How did you get the case from Tracy

1 Pinnock?

2 MR. VANSYCKEL: I believe -- I was talking to
3 Ms. Eigenbrot about this earlier. I believe -- it's my
4 understanding that Mr. Brown and Ms. Pinnock did not get
5 along and Mr. Brown fired Ms. Pinnock -- or had her
6 relieved and I got it because I was one of the 608
7 contract attorneys with the State. I'm commissioned with
8 Indigent Defense for state-appointed cases for Richland
9 County.

10 THE COURT: Swear Mr. Brown, please.

11 MICAH BROWN, after being duly sworn,
12 testified as follows:

13 THE COURT: Mr. Brown, what's on your mind?

14 THE DEFENDANT: Well, Your Honor, Judah, he be doing
15 my bond and all that, but it's just the fact that -- well,
16 I'm going to start when I got Tracy Pinnock. I fired her
17 because she lied on me, talking about she had my motion,
18 but she didn't have my motion. She lied --

19 THE COURT: You said you fired her?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: When did you hire her?

22 THE DEFENDANT: I didn't hire her. She was appointed
23 to me.

24 THE COURT: Well, how can you fire someone that you
25 didn't hire?

1 THE DEFENDANT: Well, I tried to relieve her from my
2 case because she was hiding my motion from me. I'm trying
3 to fire Mr. Judah because he got me -- had a motion for a
4 bond reduction. He said he's going to put the motion in.
5 I got a bond about two years ago. He said he was going to
6 do that. And I asked him, I said, Well, what's up with
7 bond reduction?

8 He talking about, Well, I didn't take you up because
9 it wasn't in my best interest. And then he's going to
10 tell me I had a court date October 31st. And he said,
11 Good. I say, What's good? He said, I'm going to take it
12 for a bond reduction. But why would he take me for a bond
13 reduction when I got a court date coming up? You know I
14 ain't get no bond if I got a court date coming up.

15 Then on top of that, you're telling me to take a plea
16 of 50 years. He say I'll be 70 when I come home and
17 that's good. I'll still be in working condition and all
18 that kind of stuff. You're telling me all this and you're
19 just now finding out my codefendant lawyer is Jack
20 Swerling. Don't let him fool y'all because he just found
21 that out. That my lawyer -- I mean my co-defendant lawyer
22 Jack Swerling, just found out, ain't got no offer or
23 nothing. How you just now found out? He been my lawyer
24 for two and a half years.

25 THE COURT: When did you find out?

1 THE DEFENDANT: I found that out my first two weeks
2 in jail.

3 THE COURT: Well, why didn't you tell him?

4 THE DEFENDANT: He wasn't my lawyer at the time.

5 THE COURT: How long have you been his lawyer?

6 MR. VANSYCKEL: I think probably I got this sometime
7 in 2020. I don't believe I got it in -- it might have
8 been 2019.

9 THE COURT: Why didn't you tell him? You've had a
10 couple of years to tell him. You're blaming him for just
11 finding out when you're the client and you knew for two
12 years and you didn't tell him.

13 MR. VANSYCKEL: Your Honor, this is a tragic case. I
14 think Micah had just turned 19 when he was arrested on
15 these charges. And it's unfortunate the very first time
16 that he's in General Sessions court is for a charge that
17 in some counties would -- he would be eligible for the
18 death penalty.

19 And I think that that has -- I think we all know
20 that, you know, the recent science that says you
21 don't finish -- that your brain does not quit developing
22 until you're 25 and you don't make better decisions. You
23 keep making better decisions as your brain matures.

24 I certainly think that this is a tough case. There
25 are statements by the victim of the alleged murder that

1 are eligible for -- they could be used to cross-examine
2 him and I think that he would look bad.

3 I think the alleged victim in the attempted murder
4 would look bad, but I think that the problem here is that
5 any time you've got someone who is at the time 19 and now,
6 20, 21, 22 years old, any time that the offers that you
7 are bringing involve a range to 30 to 50 years, which was
8 the offer for a long time, but Mr. Brown never accepted it
9 and now that's off the table, that made it extraordinarily
10 difficult.

11 Mr. Brown, when I started meeting with him, he told
12 me he would take 20 years for voluntary. Then it got to
13 where it would take 25 years for voluntary and he told me,
14 possibly, he would take 30 for voluntary. And I have been
15 caught in a position of on the one hand, I know that if
16 you keep running into court and asking for bond reductions
17 and you keep filing for bond, oftentimes, that spurs the
18 court to go and put the case on a docket.

19 So I've got a client who's telling me he wants a
20 bond, but he also wants an offer. So I've been trying to
21 balance my client's wishes and trying to pick a strategy
22 that I think best reflects that. I think that Mr. Brown
23 is done with me. I don't see --

24 THE DEFENDANT: Can I say something?

25 MR. VANSYCKEL: I don't see that -- I do believe that

1 there's been a breakdown in our relationship. I don't
2 know that he's going to be able to cooperate with me
3 because of the personal animosity.

4 THE COURT: Yeah, well, I don't appoint lawyer after
5 lawyer after lawyer. You know, the State provides a
6 lawyer free of charge and if the defendant does not want
7 the lawyer that the State provides, the defendant can hire
8 his own lawyer or he can represent himself, but he can't
9 pick and choose saying I like this lawyer, I don't like
10 that one, I want that one, I don't like that one.

11 We don't go in this endless circle of I don't like
12 what this lawyer is telling me, I don't like what this one
13 is telling me, this one is not working hard tough, et
14 cetera, et cetera.

15 Yes, sir.

16 THE DEFENDANT: Well, Your Honor, I forgot to
17 mention, when he just told you about my victim made two
18 different statements. He just found that out a couple
19 months ago, too.

20 THE COURT: Well, fortunately, your trial isn't until
21 October.

22 THE DEFENDANT: Yeah.

23 THE COURT: We just had one today, a couple hours ago
24 where the robbery happened in April and now we're about to
25 get them in court in a trial within the next couple of

1 months. So October, that's -- goodness, we're just in
2 July. You have plenty of time to be preparing.

3 October? October the what?

4 MR. VANSYCKEL: October 31st, Your Honor.

5 THE COURT: Let's see if I have you on my list. This
6 particular list doesn't go all the way to October.

7 MR. VANSYCKEL: Your Honor, give me a minute. I can
8 forward you the note I got for October 31st.

9 THE COURT: Sir?

10 THE DEFENDANT: I'm saying like just so much crazy
11 what the man is telling you. He even said -- he even told
12 me in front -- he even told me, said, Mr. Brown, said,
13 Micah Brown, I know I've been sitting on my, quote, A-S-S,
14 but sitting on my A-S-S is helping you. So you ain't
15 doing nothing for me at all. You ain't doing nothing. I
16 know my motion better than you. You don't even know my
17 motion. You ain't even made my motion. I'm asking you
18 questions and you're looking up stuff because you don't
19 even know nothing about my case. You don't know nothing.

20 THE COURT: So you think you want to just handle it
21 yourself?

22 THE DEFENDANT: No, I don't want to handle it myself,
23 but me and him got into a verbal altercation and all.
24 There's no need to talk to this man. You feel me? I
25 understand you're not supposed to get appointed a lawyer,

1 a lawyer. I understand that. I understand my charges,
2 what I have to do, I ain't sure about that, but this man,
3 he's not doing nothing.

4 It's somebody else trying to do it. Just for me, I
5 got a -- I got counsel off today, some white boy. I don't
6 know who --

7 THE COURT: Well --

8 THE DEFENDANT: But somebody else is writing him up,
9 too. Bakari Stephenson (phonetic) filing the same thing
10 on him because he's not doing nothing. He keep lying.
11 You're not supposed to tell your client you're fixing to
12 do this and then don't do that. You're not supposed to do
13 that.

14 THE COURT: Well, what happened with you and Tracy
15 Pinnock?

16 THE DEFENDANT: She said -- we went up on a motion to
17 compel and we was supposed to have my motion within 30
18 days. So I asked. It's a motion. It's a motion. She
19 said, We ain't got it yet.

20 I said, well, going before the judge, can allow a
21 continuance. I said, Okay. So I say -- I wrote the Clerk
22 of Court saying that, and then saying she came brought me
23 my motion.

24 THE COURT: So you can't get along with any of these
25 lawyers?

1 THE DEFENDANT: No, I can. They just be lying to
2 me. She brought my motion. I said -- I been have your
3 motion. I said, You're trying to play me. You just said
4 you ain't had it, now all of a sudden, you got it. So
5 that don't make sense. You lied to me. He said he put a
6 motion in for a bond reduction.

7 You ain't did it. Why you do that? You said --

8 THE COURT: Well, you have a bond or you don't have a
9 bond, do you?

10 THE DEFENDANT: I do have a bond, 500,000.

11 THE COURT: 500,000.

12 THE DEFENDANT: And I had that for more than a
13 year-and-a-half.

14 MR. VANSYCKEL: And, Your Honor, that is something
15 that I think is amazing. Micah didn't have a bond at
16 first. He didn't have a bond because of Ms. Pinnock -- or
17 while Ms. Pinnock represented him. And then I was able to
18 get him a \$500,000 bond in front of Judge Manning. So I
19 have had a bond hearing for him. I was able to get what
20 is the fact in my mind sort of a miracle bond set in this
21 matter.

22 THE COURT: How many people is he accused of killing?

23 MR. VANSYCKEL: Two bodies, and the third body, the
24 State's position is, basically, that when he left, he
25 thought he was dead. That's what they're going to argue.

1 THE COURT: I'm reading this warrants here on
2 Whispering Pine Road.

3 MR. VANSYCKEL: Your Honor, may I approach real
4 quick? I've got this email --

5 THE COURT: Yes.

6 MR. VANSYCKEL: -- where it's set for --

7 THE COURT: Micah Christian Brown.

8 MR. VANSYCKEL: That's the notice from the Clerk's
9 Office.

10 THE COURT: All right.

11 MR. VANSYCKEL: So, Your Honor, the fact is, this
12 whole time during Covid, we, defense attorneys, have had
13 to weigh a variety of factors and he has unfortunately and
14 fortunately had three different solicitors.

15 I had Mr. Cathcart. I had Mr. Fyall, and then I'm
16 now working with Dale Scott on this case. And the fact is
17 that I had to beg for the offer that I was able to get
18 from Mr. Cathcart and that offer stayed open for quite
19 some time. Mr. Fyall kept it open.

20 THE COURT: That offer was for what?

21 MR. VANSYCKEL: It was a range of 30 to 50.

22 THE COURT: Okay.

23 MR. VANSYCKEL: And, you know, at first, they were
24 talking to me about a straight 50, and I said, Give me a
25 range, give me a range of 30 to 50. The problem that I'm

1 getting is on the one hand, I'm trying to keep an offer
2 open or to get a better offer.

3 On the other hand, I know that if we go and ask for
4 another bond hearing, this time not during Covid, it's
5 going to impress upon both the court and upon the
6 Solicitor's Office and the victims that the agent in this
7 case --

8 THE COURT: I'm shocked that he got a bond.

9 MR. VANSYCKEL: Well, Your Honor --

10 THE COURT: You're charged with -- I'm just reading
11 these warrants, not that he's guilty of doing it, but --

12 MR. VANSYCKEL: Well, Your Honor, I think I told you
13 in the past I didn't go to Harvard, but I like to think
14 I'm a pretty good lawyer.

15 THE COURT: You do a good job.

16 THE DEFENDANT: He did get a bond. He did get that.

17 THE COURT: Says did shoot Brennan Montgomery by
18 shooting him in the temple while he was in a vehicle and
19 proceeded to beat another co-victim to death. A
20 codefendant picked him out of a lineup. And then another
21 warrant stomping someone and stabbing him. And I imagine
22 that person is in bad shape.

23 I mean, you have a right -- if your position,
24 Mr. Brown, is that you're not guilty --

25 THE DEFENDANT: Yes, sir.

1 THE COURT: -- and you want a jury trial and you
2 think the jury will find you not guilty, then you'd be
3 able to go. Okay, you can check out. You'll be on your
4 own, on your freedom if you win. But you're charged with
5 killing two people and maiming another. It's amazing that
6 you got a bond.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Just automatically in those situations,
9 I'm like no bond, bond denied. Because you don't have a
10 right to a bond in a case where you can get life
11 imprisonment.

12 THE DEFENDANT: I'm not saying Mr. Judah is a bad
13 lawyer. I'm not saying that neither. It just -- my case
14 is not a case where you're supposed to sit on your behind.
15 This is a case --

16 THE COURT: He's got more clients than you. He has a
17 lot of clients. He's got more than you to worry about.

18 THE DEFENDANT: I understand that.

19 THE COURT: And the reality is -- you know, I'm not
20 in your situation. He's not in your situation. She's not
21 in your situation. You're in jail facing murder charges,
22 facing life in prison and they're talking about you going
23 to prison for 50 years, 30 years, whatever, so you're
24 under stress.

25 I mean, not only just from being in jail, but having

1 to deal with whatever conditions exist over at Alvin S.
2 Glenn, along with whatever problems you had to put you in
3 jail to begin with. I mean, you're just under stress, so
4 the chances are you're not getting along with anyone too
5 well right now because you're in a tough stressful
6 situation.

7 THE DEFENDANT: That, too, but, you know, just that
8 lying to me. He said he was going to put a motion in and
9 wait until I get a bond --

10 THE COURT: Well, he apologized about that.

11 THE DEFENDANT: No, he ain't apologized about that
12 either.

13 THE COURT: If he lied. Sounded like it was probably
14 more of a misunderstanding than a lie anyway.

15 THE DEFENDANT: No.

16 THE COURT: You didn't lie to him, did you?

17 MR. VANSYCKEL: No, Your Honor. There was a variety
18 of factors at play, including just trying to balance, you
19 know, do we file the motion -- or now that there's a new
20 development in the case, do we file the motion? Part of
21 the issue was I retained an expert.

22 Well, then, it took -- they met -- that expert met
23 with Micah and Micah wanted to meet with him again. I had
24 to get more money. It took me a while to get more money
25 in the case. Then I was like, well, do I want to get the

1 expert to go ahead and do that meeting before I ask for
2 the bond again? I mean, there's just -- these cases are
3 dependent on a variety of facts and so you're trying to --
4 especially in the situation where --

5 THE COURT: And I've got to approve the money to get
6 an expert or to pay the expert more money.

7 MR. VANSYCKEL: Yes, Your Honor.

8 THE COURT: How much has been authorized so far?

9 MR. VANSYCKEL: So there has been funding for a
10 psychiatrist in this matter for up to, I believe it's
11 either \$7,500 or \$10,000.

12 THE COURT: That's what the State has paid for a
13 psychiatrist to talk to you and that's because of your age
14 at the time.

15 MR. VANSYCKEL: His age and other records.

16 And, Your Honor, I'm going to be up front and honest
17 with you, we're going to have to come back to you for more
18 money. I hired Brian Setree over in Lexington to do some
19 investigation work on the case. And this is part of the
20 problem, when we -- when I met with Micah several years
21 ago, I brought Brian Setree over to the jail and we fully
22 laid out what we thought about the case to Micah and we
23 encouraged him to plead.

24 I asked Brian, Brian, what do you, at this point,
25 think that we need to investigate or look into. And Mr.

1 Setree has had years of experience in law enforcement.
2 He's got years of experience as a private investigator.
3 And he looked at me and he said, Judah, I don't know what
4 else we can investigate.

5 So now, what Micah wants me to do is be trial prepped
6 for something that isn't trial prepped yet. And there
7 will be things that now that I've got a trial date ready,
8 I'm going to have to go in and go back through all the
9 discovery with a fine tooth comb. But the fact is that
10 the State, my initial review of the discovery, Mr. Setree,
11 all of it put us in a position where we're telling Micah,
12 Micah, we've worked out an offer for you that's not life.

13 THE DEFENDANT: I ain't taking 50 years either. I'm
14 not signing something in blood.

15 THE COURT: You don't have to take 50 years. You
16 have the right to a jury trial?

17 THE DEFENDANT: Yeah.

18 THE COURT: And then if you're found guilty, it won't
19 be what you take, it will be what the judge gives you. If
20 the judge says life, that's it.

21 THE DEFENDANT: 50 years is life you might as well
22 say.

23 MR. VANSYCKEL: Your Honor, I tried to tell Micah
24 numerous times that when I was his age, I thought four
25 years was a long time because I was making decisions about

1 college or whether or not to join the military or whether
2 or not to take some kind of commission after law school.
3 I'm now almost 40 and four years is nothing. And I know
4 that I have the benefit of having lived a little longer,
5 which is part of why I've been trying to balance what's in
6 his interest, trying -- and his stated purpose of trying
7 to get a plea I can take.

8 Well, there's a potential for you wanting to take a
9 plea, we've got to figure out what kind of plea we can
10 get. If he wanted a plea, which is what he said, he would
11 be willing to take 25, maybe 30. Pushing this to a trial
12 faster was not going to necessarily get us to that 30-year
13 point quicker.

14 THE COURT: How old are you now?

15 THE DEFENDANT: Twenty-three.

16 THE COURT: Twenty-three.

17 THE DEFENDANT: And I've done four years. Me being
18 70 years old, you might not even want to get out of prison
19 when you're 70 years old. That's all your old age. You
20 might want to stay there. Everybody's dead, your mama
21 dead, sister, everybody dead.

22 THE COURT: I'm 70 now and if I were in there, I'd be
23 ready to get out and be happy to get out. But, you know,
24 it's a tough situation, but in many instances, you make
25 your bed, you've got to sleep in it, whatever the

1 situation is. I know nothing about your case.

2 I've never seen you before. I just know that the
3 State appoints you a lawyer and if you don't want it -- I
4 don't go past two lawyers. I mean, you had Ms. Tracy
5 Pinnock. She's been here about ten to 15 years as a
6 public defender. She's one of the top public defenders.
7 She even teaches at the law school. She's an excellent
8 lawyer.

9 THE DEFENDANT: She always get off people case. I
10 seen her relieved on, at least, five or six cases.

11 THE COURT: I know. Well, people in the jail, they
12 always wants to blame somebody else for their troubles.
13 You think a lawyer can work some kind of miracle. They
14 can't change -- whatever the situation is, they can try to
15 help you, but they can't create a new set of facts. I
16 mean, I don't know what happened, but if you're sitting in
17 a car and you shoot somebody in the head and the State
18 proves that you did it, you're lucky not to get life. And
19 then if you've kill another person on top of that and then
20 stomp and stab another one on top of that, you have like a
21 75 percent chance of getting life.

22 So he's working, trying to get you something less
23 than that, you should be thanking him for trying to save
24 you. You can't --

25 THE DEFENDANT: Fifty years?

1 THE COURT: Pardon?

2 THE DEFENDANT: Are you trying to convince me to do
3 50 years?

4 THE COURT: I'm just having a conversation because
5 it's solely up to you. Chances are I'll be your judge on
6 October 31st. And we'll be sitting and witness after
7 witness and the jury will say whether guilty or not
8 guilty. And if you're guilty, then you get a sentence.

9 THE DEFENDANT: I ain't going to lie. I ain't
10 holding my tongue. I really didn't do it. We all know
11 it. Some people don't know it, but the system is corrupt.
12 The only person who really on your side is a paid lawyer,
13 not no state paid lawyer, but one you pay with your own
14 money, that's the one who going to work for you. The
15 system is corrupt people.

16 They're going to work whatever. They can say they're
17 trying, but they ain't trying. They can say what they
18 want to say. My mom is talking to a lawyer. They're
19 costing \$35,000 up front, originally wanted \$100,000.

20 THE COURT: Sound like you have all the answers.

21 THE DEFENDANT: I'm just saying I can't do it on my
22 case.

23 THE COURT: If I let him go, if I let you relieve
24 him, then you won't have a lawyer because I'm not going to
25 appoint another one because if you can't get along with

1 Pinnock and you can't get along with VanSyckel, then you
2 won't be able to get along with another one either.

3 THE DEFENDANT: I probably would, you never know
4 until you try it.

5 THE COURT: We don't go through the boxes like that.
6 The State hasn't provided you a lawyer. Mr. VanSyckel is
7 not a State lawyer.

8 THE DEFENDANT: I know.

9 THE COURT: The State is paying him just as they paid
10 that expert \$7500 to come over there and figure out what's
11 going on in your mind.

12 THE DEFENDANT: I won't to say this, I ain't
13 believing nothing like that. I'm just saying if you leave
14 him on my case, it ain't fine with me, but that's --

15 THE COURT: Well, you have to get along with him.

16 THE DEFENDANT: I'm going to get me another lawyer.

17 THE COURT: Y'all stuck with each other. You know,
18 you've got to work with him, he's got to work with you.

19 THE DEFENDANT: Matter of fact, Your Honor, I been
20 put a relief of counsel a year ago. He ain't never said
21 nothing about that. I been put that in. Don't think it's
22 because of the court date, I been put that in a year ago
23 with some change, matter of fact. Been put that in. He
24 ain't never mentioned it to me or nothing.

25 It's hard to get in contact with the man. He only

1 talk to me when he want to talk to me. I been put one in.
2 Sometimes I think it ain't -- ain't like it's just to talk
3 to y'all. This man realize it and lying, too. All kind
4 of things going on.

5 THE COURT: Who do you think want to take your case?

6 THE DEFENDANT: I don't care. As long as it ain't --

7 THE COURT: I mean, you can tell that you're kind of
8 difficult to get along with, don't you think?

9 THE DEFENDANT: No, I just don't like to be played
10 with. I just speak my mind, that's all that is. I don't
11 sit and hold my tongue. I'm just speaking my mind. This
12 man lying to me, all this, trying to get me to take 50.
13 I'm not going to say that.

14 I'm just letting you know that. I been put in a
15 motion to relieve counsel. He ain't never mentioned it to
16 me. I tried to call --

17 I'm trying to call you a week straight before and you
18 don't answer the phone. You just don't answer the phone.
19 You talk to me if you want to talk to me. I'm just saying
20 that don't make sense. If you my lawyer, why you trying
21 to convince me --

22 THE COURT: Most of the --

23 THE DEFENDANT: -- to take 50 and saying that's good.
24 Why would you even say that to me?

25 THE COURT: Plus, if we change lawyers at this point,

1 it will probably be another lawyer to say well, I need a
2 year to get ready, so your case would be pending probably
3 another year. Nobody can just grab your file and say
4 okay, I'll be ready October 31st. You have a trial date
5 at this point.

6 THE DEFENDANT: It's my life, Your Honor. Like I
7 say, y'all don't deal with this. You know what I'm
8 saying. It's my life here. I'd rather have a different
9 lawyer. I mean, I'm not saying he's a bad man. I'm just
10 saying that's not the lawyer I need to tell me to take
11 50 --

12 THE COURT: Well, you tell me which one you need.
13 You've been given two, and you don't want any of those
14 two. You tell me who you want.

15 THE DEFENDANT: I don't know.

16 THE COURT: Well, you don't know. So?

17 THE DEFENDANT: Are you giving me a choice?

18 THE COURT: I just want to know what's on your mind.
19 I don't have to agree with your choice. I've already said
20 I'm not --

21 THE DEFENDANT: John Tate.

22 THE COURT: Who?

23 MR. VANSYCKEL: Mr. Tate, he wants Mr. Tate from the
24 Public Defender's Office.

25 THE COURT: John Tate. He's retiring.

1 THE DEFENDANT: Oh, he's retiring?

2 THE COURT: Yeah, he told me he's about done. I
3 forgot where he said he's going, to Georgia or some place.

4 MR. VANSYCKEL: You're talking about Sarah Jurick?

5 THE COURT: Sarah from Seattle?

6 THE DEFENDANT: Yes.

7 THE COURT: She's a good lawyer.

8 THE DEFENDANT: I heard.

9 THE COURT: But you already had a Public Defender.
10 Where is Sarah Jurick? Do you know Sarah?

11 INTERN: Yes, sir, I do. I'm aware she's planning on
12 departing from the Public Defender's Office to move back
13 to Seattle.

14 THE COURT: She's going back to Seattle?

15 UNIDENTIFIED WOMAN: Around September.

16 THE COURT: I know Sarah. She's one of my favorites.
17 I said that this morning.

18 She's heading back to Seattle. Who else you want?

19 THE DEFENDANT: Whoever you put me with.

20 THE COURT: I like Mr. VanSyckel. He's educated from
21 someplace. Did you go to Cooley?

22 MR. VANSYCKEL: I went to Charleston, Your Honor.

23 THE COURT: Charleston School of Law. We've had
24 cases together in Aiken, Bamberg, Barnwell, Lexington. He
25 knows what he's doing. And he has enough patience to come

1 here and hang in there with you because most lawyers will
2 say please grant his motion. Please let me go. Let him
3 bother somebody else.

4 MR. VANSYCKEL: Your Honor, I think that if I'm going
5 to stay with Mr. Brown, we can't have any more
6 conversations like we did last time. I think I'm allowed
7 to say this in court since it's -- but I was repeatedly
8 called a pussy ass. So I don't know that I can keep
9 having meetings where I'm just getting yelled at those
10 kind of names and have productive conversations.

11 THE COURT: That's what I'm telling Mr. Brown is that
12 you blow it with this lawyer, you're going to be here
13 representing yourself because I don't just name lawyer
14 after lawyer after lawyer because I'm convinced that no
15 one can satisfy you. That's why you're in the situation
16 you're in because you're difficult to deal with and you're
17 under a lot of pressure. You're under a lot of stress.

18 THE DEFENDANT: I mean, I mean, like I said, I've
19 done four years. You know, all that stress, you know, it
20 would kill y'all. Forgive me but, Tracy, I ain't never
21 got into it with Tracy. I done told her, I said is I
22 might need somebody different to represent me. I had to
23 do all that because you lied to me.

24 I asked him, I said, Why you lied to me? You know
25 something. He said, I'm like, bro, you lied. It's like I

1 explained --

2 THE COURT: How are you going to be fighting with
3 your lawyer and expect your lawyer to be fighting for you?
4 You've got to get along with your lawyer. It's not his
5 case, it's your case.

6 THE DEFENDANT: Yeah.

7 THE COURT: His job is to help you, to give you
8 advice. He can't become -- all of a sudden, act as if
9 he's charged with murder. He's not accused of killing
10 anybody. He's not going to go to prison. You're the one,
11 you know, facing all of that. His job is to help you if
12 you want to be helped.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: But you can't -- how is he going to help
15 you if you're always accusing him, cursing him,
16 disrespecting him and then accusing him of disrespecting
17 you?

18 THE DEFENDANT: I mean, Your Honor, that was just one
19 time. I'm just saying with him personally when I feel
20 like you ain't fighting hard for my life, what am I
21 supposed to do?

22 You sit on your behind on my case. You don't know
23 nothing about my case. You just found out my victim made
24 two different statements and my codefendant got locked up
25 made a whole nother state. You just finding this out.

1 You just found this out. You ain't paid up for my case.
2 You ain't doing nothing. You don't come talk to me like
3 that.

4 I mean, I've been in there almost three years, and I
5 only talked to me like five or six times. We don't talk
6 about nothing. He keeps saying I need you to take this
7 50. It's the best offer I can give you, 50. 30 to 50
8 ain't nothing but a --

9 THE COURT: Well, he said he worked out a plea for
10 you, so he didn't have to do all the stuff you're saying
11 that he needed to do to be ready for a trial. Now that
12 you said you don't want to plea, then he's got to prepare
13 for a trial.

14 THE DEFENDANT: Your Honor --

15 THE COURT: Including the State spending probably
16 ten, \$15,000 to hire experts and investigators and
17 everything to be sure that he's gotten all facts down.

18 THE DEFENDANT: Well, Your Honor, believe it or not,
19 Mr. Judah lied to you again because of that word. I ain't
20 never asked for no plea. He pulled up with a plea, with
21 that 50. He pulled up with that. After that, after he
22 told me about that 50 and all that, I said, man, I said,
23 if I got to take time, I got to take something lower than
24 that. I ain't never mentioned no plea to him like that --

25 THE COURT: But it's his job -- he has to tell you if

1 they offer a plea. He can't keep it under secret. He's
2 got to tell his client what the Solicitor says. He's got
3 to tell you what your plea offer is.

4 THE DEFENDANT: Right, but he just told you, I kept
5 asking him for a plea. I never asked him for nothing. I
6 never asked that man for no plea. I don't want to take no
7 plea. I want to go home. What kind of nigga want to take
8 a plea? That ain't on my mind. Going home is on my mind.
9 I asked that man for no plea. This man pull up with a
10 plea. My mom might be asking about a plea, then he
11 started talking about plea, then he kept talking about 50.
12 I said, man, if I have to take a plea, I want something
13 lower than that, okay.

14 THE COURT: I got you.

15 THE DEFENDANT: He lied to your face, Your Honor.
16 You said raise your right hand and say you tell the whole
17 truth, not nothing but the truth. You just lied in the
18 courtroom just now. What you talking about. I ain't ask
19 you for no plea.

20 THE COURT: All right. We're going to wrap this up.
21 It's five o'clock. We're going to let you get some rest
22 and we'll pick this up later on. I might have you come
23 back and talk to you again in a week or two.

24 THE DEFENDANT: All right. Yes, Your Honor.

25 THE COURT: I mean, you're not going anywhere, are

1 you?

2 THE DEFENDANT: No. I'll be here.

3 THE COURT: We'll pick this up again. Let everybody
4 sleep on it. We'll see what's what.

5 THE DEFENDANT: I don't want that man as my lawyer
6 brother.

7 THE COURT: You can be -- you can handle it yourself.

8 THE DEFENDANT: I can't handle it.

9 THE COURT: You have a Constitutional Right to
10 represent yourself.

11 THE DEFENDANT: I can't handle it myself. I can't.
12 You got a State appointed lawyer on me. This system is
13 corrupt. I can't. I ain't want no plea.

14 THE COURT: There are different people who are in
15 this system who are corrupt, and they get brought right
16 where you are, as well as people who commit crimes.

17 THE DEFENDANT: The lawyer works for the system,
18 period. It's on me because he's going to get a plea, you
19 know what I'm saying. It's me and raw deal. You get paid
20 regardless.

21 THE COURT: You might have to handle this one
22 yourself.

23 THE DEFENDANT: If he gets conviction, it's the same
24 thing. They win both on me.

25 THE COURT: Sounds like you might have to handle this

1 one yourself. You get some time to think about it,
2 though.

3 THE DEFENDANT: All right.

4 MR. VANSYCKEL: Your Honor, I know you said you've
5 give him some time to think about it. I would ask that we
6 not reschedule it for this. I'm actually supposed to be
7 on family vacation. I've already missed three days --

8 THE COURT: We only have court through Thursday
9 morning of this week. I said in a few weeks.

10 MR. VANSYCKEL: Okay. Okay. I would prefer not to
11 come back this week. I've got no other court --

12 THE COURT: We're going to let everybody sleep on it,
13 think on it a couple of weeks.

14 You know, the amazing thing, you're a smart young man
15 and at age 23, you probably could have been made a whole
16 lot out of your life. You could be there as a lawyer
17 doing you're own talking.

18 THE DEFENDANT: You're right. I can't fight the
19 system now, you know what I'm saying. It is what it is.
20 You think somebody going fight hard for your life. You do
21 the right paperwork to get fired me and you fire me. That
22 don't make sense. We can't do anything because the system
23 is stupid. Even when you try to help yourself, you can't
24 help yourself. I write paperwork and all for no reason.
25 I been wrote it a year before this court date, so I

1 figured I wasn't going home.

2 THE COURT: All right. We'll chat. We'll talk with
3 you again in a few weeks.

4 THE DEFENDANT: All right. Just give me a counselor,
5 you know what I'm saying, that tells the truth.

6 THE COURT: What now?

7 THE DEFENDANT: Send him a letter. I'm going to keep
8 following up on that.

9 THE COURT: All right. Mr. Brown.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: So the Chief Justice of the Supreme Court
12 a few years ago said that people that write those letters
13 to try to force their way into getting a new lawyer, the
14 Chief Justice says that's not a reason to let a lawyer go.

15 THE DEFENDANT: You're talking about him lying to me,
16 telling me to take the plea deal and go crazy, bro?

17 THE COURT: I'm just telling you, we'll talk to you
18 in another couple of weeks.

19 THE DEFENDANT: Okay. I got a motion of discovery
20 is, too. I asked you about that, taking a look at that
21 and you said you ain't.

22 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 11th day of July,
2022.

January 17, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
)
 2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----x
 4 STATE OF SOUTH CAROLINA,)
)
 5 State,)
)
 6 vs.) Case No. 2019-GS-40-01951
) 2019-GS-40-01952
) 2019-GS-40-01953
 7 MICAH CHRISTIAN SYLVE)
 8 BROWN,)
)
 9 Defendant.)
 -----x

August 15, 2022

10 MOTION TO RELIEVE COUNSEL

11 B E F O R E:

12 The Honorable Clifton Newman, Presiding Judge

13 A P P E A R A N C E S:

14 Judah VanSyckel, Esq.
 15 Attorney for the Defendant

22 Recorded by: Court Monitor/DCRP

23 Transcribed by: Bobbi Fisher
 24 SC Official Court Reporter III
 25

I N D E X

DESCRIPTION	PAGE
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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 3:33 p.m.:)

MICAH BROWN,

after having been duly sworn, was examined and testified to as follows:

THE COURT: All right, Mr. VanSyckel?

MR. VanSYCKEL: Your Honor, this is Mr. Brown's motion. He previously requested that I be fired off his case. I believe we heard that at the beginning of July, and then you had stated that he would have time to think about, and we would reconvene on this hearing. And I went to Mr. Brown and asked him if he still wanted to fire me, and after the conversation that we had in front of you, I believe you stated to Mr. Brown that he needed to think that if -- he needed to think about the fact that, if I was to leave, he might end up with no lawyer whatsoever. And I asked Mr. Brown if he still wanted to move forward with this hearing, and he says that he does want to fire me. I believe he's got a request for one of the folks from the public defender's office, and then, you know, I don't think that's within my -- I don't think I can advise him about that at all. I think that's where we are. I think this is between him and Your Honor.

THE COURT: All right. Mr. Brown?

THE DEFENDANT: Your Honor, like I say, I filed the right paperwork to come up here and handle this right --

1 THE COURT: Can you pull your mask down so I can
2 understand what you're saying?

3 THE DEFENDANT: I say I went through all the right
4 paperwork to fire him on my case -- well, relieve him of my
5 case --

6 THE COURT: Well, you let him -- if he's fired, are you
7 going to represent yourself? I think I went through that with
8 you before.

9 THE DEFENDANT: You did. I'm just saying, you know, it's
10 my life -- you know, it's my life. I feel like --

11 THE COURT: You can be your own lawyer --

12 THE DEFENDANT: I don't feel like he's fighting for my
13 life. I should be able to remove him.

14 THE COURT: You can represent yourself. You don't have a
15 right to pick and choose. You've been given how many lawyers
16 now?

17 THE DEFENDANT: This is the second one. The first one,
18 you're supposed to get one. So this is really my first time.

19 THE COURT: Well, Mr. VanSyckel is a good lawyer, does a
20 good job --

21 THE DEFENDANT: In your opinion. In your opinion.
22 Correct?

23 THE COURT: Well, you wait until I get through talking.
24 He's a good lawyer, does a good job. You have not convinced
25 me of any legitimate reason why he should be removed other

1 than that's what you want.

2 THE DEFENDANT: Do you want me to give you some reasons?

3 THE COURT: Yes, sir.

4 THE DEFENDANT: Okay. He lied to me about the
5 (indiscernible) and he told me he was going to take it and put
6 that motion and he did not put that motion in. It's been
7 almost a year since he was supposed to put that in.

8 Second, he pulled up on me, telling me to take 50 years.
9 I'll be 70 when I come home and that's a good age to come
10 home. That's not a good age to come home. You're my lawyer.
11 You're not supposed to convince me to take no 50 years. No
12 way none of that going on. He's not on my side. I'm not
13 going for that. That's on -- you know, and I ain't going to
14 lie to you. I ain't bowing down -- you said I can represent
15 myself. I'm going to represent myself. I ain't going to lie
16 to you. I ain't having nobody fighting for my life -- who
17 ain't fighting for my life. I got two murder charges, bruh.
18 I'm facing multiple life sentences. You feel me?

19 I just want you to see. I'm not trying to be angry,
20 ain't trying to be mean, nasty, none of that. I just don't
21 hold my tongue and letting you know, like, I don't feel like
22 he's fighting for my life like he's supposed to. He feel like
23 if I get 50 years or look at my charges or "Oh, they carry
24 life," okay, well, if you tell -- you feel me? It is what it
25 is. He just don't care. He feel like he's fighting a losing

1 battle. I understand. I respect it. I ain't trippin'. You
2 feel me?

3 But all that lying and all of that business trying to
4 convince me to take 50 years, that is, like, that's just a
5 number. I'm not going to play like that. You know what I'm
6 saying, Judge? He don't answer the phone. He don't do none
7 of that.

8 THE COURT: All right.

9 THE DEFENDANT: I don't talk to this man like that. He
10 get in contact me whenever you want to. When I call him, oh,
11 the paralegal want to tell me I got to call him first. So, I
12 called him then; he don't answer. I ain't going for that,
13 man. He won't answer the phone.

14 He don't know nothing about my case or nothing. He don't
15 know the victim made three different statements. He don't
16 even know that. Like I say, he ain't even know my
17 co-defendant lawyer. I mean, yeah, he didn't even know him.
18 He just now find that out. He's my lawyer for two and a half
19 -- you're just now finding all that information out? Come on,
20 man. He don't know nothing about my case. Nothing. You
21 ain't even prepared yourself. Come on, now. If that ain't
22 reason enough to fire him, I don't know what is.

23 THE COURT: Well, you didn't hire him, and you can't fire
24 him. The Court can relieve him, and if I relieve him, you
25 have to represent yourself. He wasn't out there at the Bush

1 Springs Pines on this date that this thing allegedly occurred,
2 and he wasn't out there at this other location at Soft Stone
3 Drive, and he was hired to assist you --

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: -- to help you. It's your case. You're the
6 one facing the time, as you said. You know, he's a lawyer who
7 is there to advise you, to assist you. In your case, you've
8 been writing letters directly to the Court almost as if you
9 are attempting to represent yourself anyway.

10 THE DEFENDANT: It's not that, Your Honor. It's just --
11 you feel me?

12 THE COURT: Sir?

13 THE DEFENDANT: I'm sorry. My fault. I'm just saying --
14 I just feel like this is my life, I should be able to fight
15 for my life, not by myself. I'm just saying, if I feel like
16 he's not fighting to the best of his ability for my case, I
17 feel like I should do the right paperwork and get that help.

18 THE COURT: If I let him go, you've got to represent
19 yourself or hire a lawyer. You will not get another free
20 lawyer.

21 THE DEFENDANT: And why is that? I just want to hear
22 your answer.

23 THE COURT: Because I'm not going to allow it.

24 THE DEFENDANT: So you're saying you feel like he's a
25 good lawyer? Is that what you're saying?

1 THE COURT: He is a good lawyer.

2 THE DEFENDANT: In your opinion. He's not fighting for
3 you. He's fighting for me.

4 THE COURT: Okay.

5 THE DEFENDANT: He's fighting for me. He's not fighting
6 -- he ain't doing nothing for me. You're going to force me to
7 represent myself?

8 THE COURT: Mr. VanSyckel, what would you like to say
9 about it?

10 MR. VanSYCKEL: Your Honor --

11 THE DEFENDANT: (Indiscernible) trippin'.
12 (Indiscernible) talking about (indiscernible). Go handle your
13 business.

14 THE COURT: You're talking to yourself? I said, "Are you
15 talking to yourself?"

16 THE DEFENDANT: Nah, I ain't talking to myself. I'm just
17 saying -- I don't want to hold my tongue, but I ain't got
18 nothing to say. I came up here, I did the right paperwork, do
19 all this, and you play me like (indiscernible). Come on,
20 bruh. (Indiscernible.) I knew you were going to play this
21 here. You going to say me (indiscernible), you should have
22 wrote me a letter in the mail telling me that. Come on, now.
23 I'm not doing all that. I did the paperwork and did all this
24 shit to fire this man, bruh. Come on. You know, I face two
25 murders, bruh.

1 I've seen this (indiscernible) wind up pleaing. I ain't
2 even say he was a bad lawyer. I'm just saying, all that right
3 there, I don't be playing about that. If I don't feel like he
4 should be with him, I think you should be able to do that for
5 me. Come on, bruh. Come on. Tighten up. Man, that's crazy
6 like. All these black niggas going to jail. You know what
7 I'm saying? And prison and all that. And you act like you
8 don't even care. Come on, bruh. Tighten up, bruh. At least
9 give me a fair trial. You ain't even trying to do that. I
10 thought everybody's supposed to get that, a fair trial. I
11 ain't trippin'. (Indiscernible).

12 THE COURT: Go ahead, Mr. VanSyckel.

13 MR. VanSYCKEL: Thank you, Your Honor. I don't believe
14 that I've got any kind of relationship with Mr. Brown at this
15 point. I do believe that our relationship is irretrievably
16 broken.

17 I will -- if I keep representing him, I will, of course,
18 you know, do what I'm required to do ethically. I don't
19 believe that we've had any meaningful interactions the past
20 two times that I've visited him in the jail.

21 THE COURT: And why is that?

22 MR. VanSYCKEL: Two times ago, he just -- Mr. Brown got
23 very upset with me and angry with me and told me that he
24 didn't want to meet with me, which is what I relayed at the
25 last hearing.

1 And then the last time I went to see him, you know, he
2 said he didn't want to meet with me. He said he didn't want
3 me to be his lawyer anymore, and so, you know, I just gave him
4 the discovery and he said he still wanted to fire me, so I
5 just left.

6 I do have concerns that we're going to be prepping trial,
7 and it appears that Mr. Brown has pretty significant animosity
8 towards me, and I don't see how that is going to bode well for
9 him. And I have been concerned for Micah that the entire time
10 that I've been representing him, he's facing a life sentence
11 on murder -- he's facing a life sentence on the murder, he's
12 facing up to 30 years on the attempted murder. And he's got
13 the other set of charges. I believe one of those is a
14 burglary first, and he's facing 15 to life on that one.

15 So, to -- I know that this is going to be a very tense
16 and stressful situation, and I think it's going to -- it's
17 going to be a very tough situation. And I don't believe that
18 we have a -- we have much of a relationship at this point.

19 THE COURT: Is this case on the trial roster?

20 MR. VanSYCKEL: For October 31st, Your Honor.

21 THE COURT: October 31st. All right.

22 And Mr. Brown has all the discovery material at this
23 point?

24 MR. VanSYCKEL: I believe so, Your Honor. Well, that's
25 not entirely true, Your Honor. He has all the discovery

1 materials that -- to the best of our -- me and my paralegal's
2 knowledge, he has all the materials that are able to be
3 printed. There is some material that is not printable --
4 videos, other files that are just not -- that are not able to
5 be printed out. They exist only in digital form, and we have
6 not been able to deliver those to him in jail because, as far
7 as I'm aware, it's not possible to leave electronically store
8 information with the defendant in the jail.

9 THE COURT: Who is the prosecutor on the case?

10 MR. VanSCKYHL: This is Dale Scott's case.

11 THE COURT: Anything else on this matter?

12 THE DEFENDANT: I mean, I said what I -- I ain't
13 trippin'. You feel me? Like I say, he say I want to fire
14 him. Yeah, I did want to fire him. I did get mad. I mean,
15 y'all are (indiscernible). You know what I'm saying? I told
16 him (indiscernible) and he did, and I asked him why, and he
17 just said he wasn't -- it wasn't a best case thing. He was
18 like, I got a new -- I was like, "What's up?" I got a court
19 date. I like, "Whatever you talking about?" He be like, "I'm
20 going to take you for a bond reduction." What sense does it
21 make to take me for a bond reduction if I got a court date?
22 You know that's going to get denied. That don't make sense.
23 That don't make sense.

24 I know every lawyer in here know that's not possible, to
25 get no bond reduction and you've got a court date.

1 THE COURT: Yeah, well, you seem to have a lot of
2 answers, so you may --

3 THE DEFENDANT: I ain't got all the answers. I'm just
4 saying --

5 THE COURT: -- be able to do pretty good representing
6 yourself.

7 Do you want me to relieve him as your lawyer?

8 THE DEFENDANT: Yeah, go ahead and relieve him. Yeah.

9 THE COURT: All right.

10 THE DEFENDANT: I ain't buying none of that.

11 THE COURT: Mr. VanSyckel is relieved. Mr. Brown will
12 represent himself. I will have the public defender's office
13 or someone appointed to -- as standby counsel in the event he
14 wants to ask them any legal questions during the course of the
15 trial.

16 THE DEFENDANT: I ain't representing myself, bruh, but do
17 whatever you do -- put on the paperwork -- whatever you put on
18 there, I ain't trippin' about --

19 THE COURT: All right. Very good.

20 THE DEFENDANT: Is that good? Everybody straight?

21 THE COURT: This hearing is over.

22 (At 3:45 p.m., the above hearing concluded.)
23
24
25

1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: State v. Micah Christian Sylve Brown

3 2019-GS-40-01951

4 DATE OF HEARING: 8/15/2022

5 COURT REPORTER/MONITOR: DCRP

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.
14

15 17 /s/ Bobbi Fisher

18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: January 22, 2023
20
21

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2019-GS-40-01951
		2019-GS-40-01952
		2019-GS-40-01953
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICAH BROWN,	)	
	)	
DEFENDANT,	)	

October 14, 2022
Columbia, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

APPEARANCES:

DALE SCOTT, ESQ.
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T SINDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 MICAH BROWN, after being duly sworn,
2 testified as follows:

3 THE COURT: Yes, sir.

4 MR. SCOTT: Thank you, Your Honor. I appreciate you
5 hearing this. I guess this is, for lack of a better term,
6 a status conference. Mr. Brown is charged with two counts
7 of murder, 2019-GS-40-01952 and 1953, as well as one count
8 of attempted murder.

9 He has been scheduled to be on the trial docket
10 November 7th. As of August 24th of this year, he has been
11 relieved of counsel and, apparently, he's going to proceed
12 on a double homicide case pro se. And I just want to, I
13 guess, make sure that everybody is on the same page that
14 you will proceed November 7th with Mr. Brown representing
15 himself on these charges.

16 THE COURT: Is that right, Mr. Brown?

17 THE DEFENDANT: It wasn't my decision to go pro se,
18 but I guess so.

19 THE COURT: Sir?

20 THE DEFENDANT: I said it wasn't my decision, but, I
21 mean, it's up to y'all how y'all want do to the thing. It
22 wasn't my decision. I fired my lawyer. You made me pro
23 se.

24 THE COURT: And you're ready to go to trial?

25 THE DEFENDANT: I ain't ready to go to trial. I

1 ain't got no legal work done. Y'all do what y'all do.
2 When I come in here doing pro se, I'm not saying not a
3 word. I'm not capable of representing myself, so y'all
4 have to do what you have to do.

5 THE COURT: Did I also order standby counsel?

6 MR. SCOTT: You did, Your Honor.

7 THE COURT: And who is that?

8 MR. SCOTT: I haven't heard from anyone.

9 THE COURT: Did the Public Defender's Office provide
10 standby counsel? Is that how it's typically done or who
11 is typically standby counsel?

12 MR. SCOTT: I've seen Tivis Sutherland do it a couple
13 of times, but I don't know how he wound up in that
14 position. Mr. Brown had Judah Vansyckel, who I believe
15 came to represent him through some sort of conflict with
16 the Public Defender's Office. That's typically how he
17 gets assigned.

18 Mr. Brown's codefendant is represented by Jack
19 Swerling. You know, if he doesn't have a conflict, Your
20 Honor, I think Tivis would be a good choice for standby
21 counsel for Mr. Brown.

22 THE COURT: All right. I'll order Mr. Sutherland to
23 serve as standby counsel to answer any questions that
24 Mr. Brown might have should he have any questions of the
25 standby counsel and the case will proceed on November 7th.

1 Mr. Brown has been advised of the dangers of
2 self-representation. He did not want to have a lawyer
3 that was provided to him, so he has to represent himself.

4 MR. SCOTT: Thank you, Your Honor. I appreciate you
5 hearing it.

6 THE COURT: Unless he hired someone else in the
7 meantime.

8 MR. SCOTT: Thank you, Your Honor.

9 THE COURT: All right.

10 THE DEFENDANT: That's it? That's good? All right,
11 shit. I'm straight now. You know what, I'm going back.
12 Talking about some shit, talking about shit.

13 (Whereupon, the proceedings were concluded.)
14
15
16
17
18
19
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24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 14th day of
October, 2022.

January 17, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
 2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
 4 STATE OF SOUTH CAROLINA,)

5 vs.)

Case No. 2019-GS-40-01951
 2019-GS-40-01952
 2019-GS-40-01953

6 MICAH CHRISTIAN SYLVE)
 7 BROWN,)

8 Defendant.)

9 -----X

November 7-10, 2022

JURY TRIAL

B E F O R E:

The Honorable DeAndrea G. Benjamin, Presiding Judge; and
 a jury.

A P P E A R A N C E S:

Christopher Dale Scott, Esq.

Assistant Solicitor for the State

Micah Brown, Pro Se Defendant

Tivis Sutherland, Esq.

(Assisting the Defendant)

Recorded by: DCRP/Renee Sexton

Transcribed by: Bobbi Fisher
 SC Official Court Reporter III

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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

No.	Description	ID.	REC'D
1	Miranda Rights Form	41	61
2	Photograph	60	61
3	Photograph	60	61
4	Photograph	60	61
5	Photograph	60	61
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15	Photos of Vehicle on Whispering Pines Road	77	77
16	Photos of Vehicle on Whispering Pines Road	77	77
17	Photos of Vehicle on Whispering Pines Road	77	77
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1	19	OMITTED		
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3	21	Photo of Kia Forte	102	103
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12

13

14

15

16

17

18

19

COURT REPORTER LEGEND

20	Dash (--)	Indicates an interruption in speech
21	Ellipses (...)	Indicates trailing off in speech
22	(ph)	Indicates phonetic word
23	[Verbatim]	Indicates the word is said as written
24	(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

25

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 9:30 a.m.):

3 THE COURT: All right. I'll ask the solicitor to go
4 ahead and call the case.

5 MR. SCOTT: Thank you, Your Honor. This is the matter of
6 the *State vs. Micah Christian Brown*. The trial that you're
7 calling today consists of three true-billed indictments. The
8 first one, 2019-GS-40-01953, that's an indictment for the
9 murder of Jasmine Richardson. Indictment 2019-GS-40-01952 is
10 a true-billed indictment for the murder of Brennan Montgomery.
11 And then the final indictment is an attempted murder of Taurus
12 Williams. That indictment number is 2019-GS-40-01951.

13 P R E T R I A L M A T T E R S O F L A W

14 THE COURT: All right. Thank you.

15 And, Mr. Brown, let me have you stand up and raise your
16 right hand.

17 Madam Clerk?

18 M I C A H C H R I S T I A N B R O W N

19 after having been duly sworn, was examined and testified
20 to as follows:

21 THE COURT: All right. And you are Micah Christian
22 Brown?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. And you are here today -- you
25 heard the State call the indictment, so call the case. You

1 are charged with two counts of murder and one count of
2 attempted murder. Is that your understanding, sir?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. And, sir, it is my understanding
5 that you wish to represent yourself; is that correct?

6 THE DEFENDANT: Well, Your Honor, no offense, but I was
7 forced to represent myself. But I don't know his name, so I'm
8 not trippin', but I'm just going to exercise my right to
9 remain silent. I'm just not going to say anything from this
10 point forward.

11 THE COURT: All right. Well, there's some questions that
12 I need to ask of you, and then I'll determine if you're able
13 -- if you're going to -- I believe you've already gone through
14 this with Judge Newman. You had two or three other lawyers;
15 is that correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Two lawyers. And you've asked for them to be
18 relieved; is that correct?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And and then I believe you went before Judge
21 Newman, at which time, he said that he was not going to
22 appoint you another attorney; is that correct?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And then, at some point, Mr. Sutherland was
25 appointed as your standby counsel?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. And you understand that meaning
3 standby -- and I think I -- Mr. Sutherland offered to
4 represent you on Friday.

5 MR. SUTHERLAND: Yes, ma'am. I think we talked on -- we
6 had a conference on Thursday. I got the discovery on Friday.

7 THE COURT: All right. Is that correct, sir?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And you declined his offer?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. And, sir, there's -- you
12 understand under the Constitution that you have the right to
13 have an attorney, and if you cannot have an attorney, that one
14 will be appointed for you, and that I am willing to appoint
15 Mr. Sutherland to represent you. Do you understand that, sir?

16 THE DEFENDANT: Yes, ma'am. I just feel like my rights
17 have been violated, but I'm just going to --

18 THE COURT: All right. What rights have been violated?
19 By an attorney?

20 THE DEFENDANT: Attorney and my right to a fair trial.
21 But I'm not going to --

22 THE COURT: All right. Well, you have -- well, we
23 haven't started the trial, but we -- and so -- but you have --
24 if you wish to have Mr. Sutherland represent you, I can
25 appoint him to represent you. But my understanding is, is

1 that you do not wish for him to represent you; is that
2 correct?

3 THE DEFENDANT: I mean, I don't know the man, Your Honor.
4 Like I say, no offense, I just -- I really ain't got nothing
5 to say to him if I ain't allowed.

6 THE COURT: All right. So you wish to represent
7 yourself?

8 THE DEFENDANT: No. I was forced to represent myself.
9 It's just what's going on.

10 THE COURT: All right. Well, but you have -- Judge
11 Newman -- you had two previous attorneys, and Mr. Sutherland
12 has agreed to represent you, but you do not wish for him to
13 represent you; is that correct?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. And, sir, you understand
16 self-representation can be dangerous, and you have the right
17 to have the assistance of a lawyer at all stages of the
18 proceeding? You understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Sir, you understand that criminal defense is
21 a highly specialized and technical area of law. You
22 understand that?

23 THE DEFENDANT: Yes, ma'am. I just feel like, since I
24 don't know him -- he ain't been on my case too long or nothing
25 like that, so I just don't -- there's no way that that can

1 happen like that.

2 THE COURT: All right. But do you understand that he is
3 a trained attorney and that he has tried cases before --

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: -- and that you are not a trained attorney,
6 as far as I know, and you have never tried a case; is that
7 correct?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. So knowing that, you still wish
10 to go forward without an attorney?

11 THE DEFENDANT: Can you repeat that?

12 THE COURT: So, you understand that he's a trained
13 attorney?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: I understand that you said that you don't --
16 you have not -- you don't know him, but he's a trained
17 attorney. He's practiced law -- I don't know how long.

18 MR. SUTHERLAND: 18 years, Judge. Not forever, but...

19 THE COURT: 18 years, primarily criminal defense work.
20 And you understand that the prosecutor is also a trained
21 attorney, and it's my understanding that you are not a trained
22 attorney; is that correct?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And so, knowing that, you still wish to
25 decline representation by Mr. Sutherland?

1 MR. SUTHERLAND: Could we have --

2 THE COURT: Do you want him to represent you?

3 MR. SUTHERLAND: Do we need a few seconds -- maybe a few
4 seconds?

5 THE COURT: Okay.

6 (Mr. Sutherland and the defendant confer off the record.)

7 THE DEFENDANT: Like I say, Your Honor, I just really
8 don't have nothing to say, Your Honor. I ain't going to lie.
9 I just don't want to talk.

10 THE COURT: So you're going to represent yourself.

11 THE DEFENDANT: I'm going to exercise my right to remain
12 silent.

13 THE COURT: All right. Well, I guess, do you want me to
14 appoint Mr. Sutherland as your attorney?

15 THE DEFENDANT: I'm going to exercise my right to remain
16 silent, Your Honor. Nobody speaking or nothing like that.

17 THE COURT: All right. I've got to -- in these -- I'm
18 not asking you as to your innocence or your guilt. These are
19 just questions that I have to ask. Well, I'll explain this to
20 you. There may be certain factual, legal, and other defenses
21 to the charges you are facing, and if you choose to proceed
22 without the services of a licensed attorney, you may not be
23 aware of certain defenses. You understand that?

24 THE DEFENDANT: I understand, yes, ma'am.

25 THE COURT: All right. And there may be collateral

1 consequences of a conviction or plea that are not -- that you
2 are not aware of, including, but not limited to, you could
3 face increased penalties for subsequent offenses -- offenses
4 later. You could be restricted from carrying a firearm or
5 ammunition. So, those are collateral consequences of a
6 conviction. You understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. And, sir, you do, under the
9 Constitution, have a right to represent yourself if that is
10 what you wish to do.

11 All right. And you're 22 years old?

12 THE DEFENDANT: 23.

13 THE COURT: 23?

14 THE DEFENDANT: I don't wish to represent myself. I just
15 remain silent. I don't want to talk.

16 THE COURT: All right. Well, either you don't want to
17 represent -- if you want to represent yourself -- either you
18 do or you don't. If you don't wish to represent yourself,
19 I'll appoint Mr. Sutherland to represent you, and you're going
20 to still remain silent because he'll do all the talking.
21 If -- but you keep telling me you don't want Mr. Sutherland to
22 represent you.

23 THE DEFENDANT: I just don't -- I ain't really -- can't
24 really say too much. I just want to save my right to remain
25 silent. I'm going to remain silent. I ain't trying to

1 disrespect you or nothing like that. I just ain't really got
2 nothing to say.

3 THE COURT: So, do you want me to appoint Mr. Sutherland
4 or not?

5 THE DEFENDANT: I ain't got nothing to say.

6 THE COURT: All right. Well, let me ask you this: You
7 -- if the State can put -- you understand that -- you
8 understand that the indictments that I have before me, there
9 are two counts of murder. Each of these carry up to life in
10 prison. You understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And I think the attempted murder carries --
13 what is it? 30?

14 MR. SCOTT: Yes, ma'am.

15 THE COURT: 30 years. You understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And if the State can put the
18 offer on the record, please.

19 MR. SCOTT: Your Honor, at some point, I think this last
20 attorney, the State offered 50 years in exchange for the
21 guilty plea and that was rejected.

22 THE COURT: Sir, is that your understanding? Are you
23 aware that the State offered 50 years?

24 THE DEFENDANT: Yes, ma'am. I remember them offering me
25 that, yes, ma'am.

1 THE COURT: And you rejected that?

2 THE DEFENDANT: Of course.

3 THE COURT: And you still reject that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. And, sir, you understand, we're
6 going to bring the jury in. We'll select the jury. You can
7 participate in jury selection if you choose to. If you don't,
8 you don't have to; it's up to you. Mr. Sutherland is there as
9 standby counsel to assist you with procedural. He cannot give
10 you any advice, but he can assist you procedurally as to how
11 things work. You understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: But, sir, procedurally, if you -- you have on
14 your Alvin S. Glenn jumpsuit. You understand, sir, that it is
15 my understanding that they had clothes if you wanted to dress
16 out in the clothes, and you told them you did not.

17 THE DEFENDANT: Yeah, he said he have a jacket
18 (indiscernible). I ain't gonna trip about all that.

19 THE COURT: You what now?

20 THE DEFENDANT: I said, he did (indiscernible) me up a
21 jacket. I just don't see no whole point in people wasting
22 money to get me no suit or nothing if I'm (indiscernible) time
23 regardless.

24 THE COURT: All right. So, they have suits downstairs.
25 If you would like to dress out, we can get you a suit to dress

1 out. Would you like a suit to dress out on it?

2 THE DEFENDANT: I mean, no, ma'am. I'm straight.

3 THE COURT: You what now?

4 THE DEFENDANT: I said I'm straight.

5 THE COURT: You're good?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You don't want to suit?

8 THE DEFENDANT: Uh-uh.

9 THE COURT: Okay. All right. I just want to make sure
10 you understand that. And you'll appear before the jury in
11 your jumpsuit.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. Do you have any questions of me?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: All right. Well, it appears that the
16 defendant is going to represent himself. I've offered to
17 appoint Mr. Sutherland, and it's my understanding he does not
18 want Mr. Sutherland appointed, and so, therefore, I do find
19 that he has a right -- constitutional right to proceed without
20 an attorney, and so we will proceed without an attorney.

21 All right. Thank you, sir. You may be seated.

22 All right. So, jury selection. So, from a procedural
23 standpoint, we are going to -- I'll bring the jury in.

24 Have you explained to him how jury selection works?

25 MR. SUTHERLAND: I have, Your Honor.

1 THE COURT: Is he going to participate or not?

2 MR. SUTHERLAND: I don't believe so, Your Honor, but I've
3 explained, you know, how it works. They go -- I told him, any
4 time that they do anything, he has a right to respond to it.
5 And my understanding is that he's not going to participate.

6 THE COURT: And if he doesn't respond in terms of his
7 strikes on the jury list, then the Court -- she's going to ask
8 him. If he doesn't say anything, then he's going to waive his
9 strike.

10 MR. SUTHERLAND: Yes, ma'am.

11 THE COURT: All right. But he has -- you explained to
12 him he has ten strikes and the State has five strikes?

13 MR. SUTHERLAND: Yes, ma'am. Okay.

14 THE COURT: Is that --

15 MR. SUTHERLAND: It is ten and five; right?

16 THE COURT: Yes, it's ten and five. Yes. All right.

17 (Mr. Sutherland confers with the defendant off the
18 record.)

19 MR. SUTHERLAND: Yeah, so he's not participating, Your
20 Honor.

21 THE COURT: Okay. All right. And I need voir dire.
22 Does he have any voir dire questions that I can ask the jury?

23 (Mr. Sutherland confers with the defendant off the
24 record.)

25 MR. SUTHERLAND: No, ma'am.

1 THE COURT: All right. Are we ready to bring the jury
2 up?

3 MR. SCOTT: I've got that one request, Your Honor, that I
4 mentioned earlier.

5 (Mr. Sutherland confers with the defendant off the
6 record.)

7 THE COURT: Is there any objection to the question?

8 MR. SUTHERLAND: Oh, my understanding is he's not
9 participating, so I guess that would be no objection, Your
10 Honor.

11 THE COURT: All right. I still have to ask, I mean,
12 since he's representing himself. So, we --

13 All right. Are we ready to bring the jury in?

14 MR. SCOTT: We are, Your Honor.

15 (Pause in the proceedings awaiting jury panel arrival
16 from 12:56 p.m. to 1:03 p.m.)

17 (The jury panel enters the courtroom at 1:03 p.m.)

18 JURY VOIR DIRE

19 THE COURT: Good afternoon, ladies and gentlemen of the
20 jury. My name is DeAndrea Benjamin, and I am a resident judge
21 here in Richland County. This week, I am assigned to a term
22 of General Sessions Court, which is also -- you would probably
23 understand it better to be a criminal court.

24 In my hand -- ladies and gentlemen of the jury, I know
25 you all were asked some questions upstairs by -- was it Judge

1 Lee? Judge Lee. I'll remind you that you are still under the
2 oath that you took during jury qualifications.

3 There's going to be a series of questions that I need to
4 ask of you to determine if you can be fair and impartial
5 jurors in this trial. I will start off by saying thank you
6 for being here and thank you for your service. If there's
7 ever any question that I ask that you do not wish to answer in
8 front of the entire panel, I'll give you an opportunity, like
9 Judge Lee, to come down and speak with me privately. If
10 there's a question that you do not -- if there's a question
11 that you do not understand, just raise your hand and we -- and
12 I'll try to better explain the question to you.

13 Ladies and gentlemen of the jury, we are about to begin
14 the trial of the case of the State of South Carolina against
15 Micah Christian Brown. Before we select the jury, there are
16 several questions that I need to ask of you, but before we do
17 that, I'm going to have three indictments here in my hand that
18 I'm going to read to you.

19 But I want to tell you first, these indictments are
20 allegations made by the State. These are the charging papers
21 made by the State to bring the defendant into court. At no
22 point should you assume that the allegations are -- that these
23 papers are not any indication of the defendant's guilt. The
24 defendant in this case has pleaded innocence -- not guilty to
25 these charges. And so, the State has the burden of proving

1 the elements of the indictments that I am about to read to
2 you.

3 The first indictment that I have here is 2019-GS-40-1952.
4 It's the State of South Carolina, County of Richland, the
5 State versus Micah Christian Sylve Brown, and this is an
6 indictment for murder. The indictment reads that Micah
7 Christian Sylve Brown did, in Richland County, on or about
8 November 7th, 2018, killed the victim, Brennan Montgomery,
9 with malice aforethought, either expressed or implied, by
10 means of gunshot, and the victim did die as a proximate result
11 thereof, all in violation of Section 16-3-10 of the South
12 Carolina Code of Laws, as amended, 1976.

13 The second indictment that I have is 2019-GS-40-1953, the
14 State of South Carolina, County of Richland, the State versus
15 Micah Christian Sylve Brown. And that indictment reads that
16 Micah Christian Sylve Brown did, in Richland County, on or
17 about November 7th, 2018, kill the victim, Jasmine Richardson,
18 with malice aforethought, either expressed or implied, by
19 means of blunt force trauma, and the victim did die as a
20 proximate result thereof, all in violation of Section 16-3-10
21 of the Code of Laws, 1976, as amended.

22 The third indictment that I have is Indictment
23 2019-GS-40-1951, the State of South Carolina, County of
24 Richland, the State versus Micah Christian Sylve Brown for
25 attempted murder, and the indictment -- the allegations in the

1 indictment read that Micah Christian Sylve Brown did, in
2 Richland County, on or about November 7th, 2018, did, with the
3 intent to kill, attempt to kill Taurus Williams with malice
4 aforethought, either expressed or implied, all in violation of
5 South Carolina Code of Law Section 16-3-29, 1976, as amended.

6 Once again, ladies and gentlemen of the jury, these
7 indictments, what I just read to you, are allegations. They
8 are allegations that are brought by the State. The State has
9 the burden of proving the defendant guilty beyond a reasonable
10 doubt to 12 jurors of his peers.

11 And so, at this point in time, ladies and gentlemen of
12 the jury, we are going to start with our jury voir dire. If
13 you -- I remind you that you are still under oath. If there
14 is any question that you do not understand, please just raise
15 your hand, and I will try to better explain it.

16 What will happen is, if you answer any of the questions
17 in the affirmative, you'll stand up, state your juror number.
18 If you don't know your juror number, you can give us your
19 name, and we will find your juror number for you. All right?

20 All right. So the -- let me have -- Mr. Brown, if you
21 can stand up and turn around and face the jury and pull your
22 mask down so they can see your face. All right?

23 (The defendant complies.)

24 THE COURT: All right. Thank you. You may be seated.

25 All right. Has any member of the jury panel ever been

1 related by blood or marriage to either Micah Christian Brown
2 or the named victims in the indictments: Taurus Williams,
3 Jasmine Richardson, or Brennan Montgomery? Is there any
4 member of the jury panel who is related by blood or marriage
5 to either the defendant or the victims in this case?

6 (No response.)

7 THE COURT: All right. Thank you. Has any member of the
8 jury panel ever had a close, personal, social, or business
9 relationship with either the defendant or the victims in this
10 case?

11 (No response.)

12 THE COURT: All right. Ladies and gentlemen of the jury,
13 please listen very closely. This is a long list of potential
14 witnesses in the case. If you -- if you -- if I call a name
15 and you're not sure and you need more information, just stand
16 up. If you think you may know someone, stand up, and then
17 I'll try to get as much information to -- for you to decide if
18 that is someone that you do know.

19 If there are any potential witnesses that are in the
20 courtroom, I'll ask that the potential witnesses stand when
21 their name is called.

22 All right. The first witness -- potential witnesses is
23 James Abraham. And these -- all of these are with the
24 Richland County Sheriff's Department. The first 24 witnesses
25 are with the Richland County Sheriff's Department.

1 James Abraham.

2 MR. ABRAHAM: Right here, Your Honor.

3 THE COURT: All right, thank you. Michael Beeler, Jr.
4 Andrew Caldwell. William Cobia. Tricia Collins. Stephen
5 Dauway. Stephen Faust. James Foster. Ryan Galinski. Trevor
6 Holt. Linda Houck. Scott Hunger. Kevin Loftis. Robert
7 Oates. Jason Roach. Sara Holt. Michelle Seay or "See";
8 S-e-a-y. William Slemp. Stan Smith. Matthew Taylor.
9 Christopher Waddell. Dan Weaver. Michael Wenzel. Brian
10 Metz. They are all with the Richland County Sheriff's
11 Department.

12 Harold Bouknight. Dorasha Swain. D-o-r -- Dorasha
13 Swain. D-o-r-a-s-h-a. Taurus Williams. Choatte Neal.
14 Savannah Wright. Ayana Jones. Victor Smalls. Sylvester
15 Brown. Calandra Edmunds. And Dr. Amy Durso.

16 Has any member of the jury panel ever been related by
17 blood or marriage to any of the people that I've just listed,
18 or does anyone have a close personal, business, or social
19 relationship with any of these people? If so, please stand.

20 (No response.)

21 THE COURT: All right. The attorneys in this case,
22 representing the solicitor's office -- I'll have him stand.
23 Is it Deputy Solicitor Dale Scott -- Senior Solicitor Dale
24 Scott.

25 You can turn around and face the jury.

1 MR. SCOTT: Dale Scott, Senior Solicitor here with the
2 Fifth Circuit. That's the circuit you reside in. That would
3 be comprised of Kershaw and Richland County, obviously trying
4 this case in Richland County. I represent the State. I'll be
5 trying this case against the defendant.

6 Helping me is Nick Fowler, who is an assistant solicitor
7 in this office. And you'll see my paralegal, Sharon Wilson,
8 in and out of the courtroom.

9 THE COURT: All right. Thank you.

10 Ladies and gentlemen of the jury, the defendant in this
11 case is representing himself. So, you met Mr. Brown already.
12 Mr. Micah Brown. Sitting next to him is his standby attorney,
13 Mr. Tivis Sutherland.

14 MR. SUTHERLAND: And, ladies and gentlemen, what that
15 means is I'm here for, like, technical questions about legal
16 stuff. Mr. Brown is representing himself. But if he were to
17 ask me -- if they were to say, "Objection to hearsay," he
18 could ask me, "What is hearsay?" That kind of thing. So, I'm
19 not defending the case, but I've been doing this 18 years, and
20 just any questions about technical stuff and, you know, even
21 jury selection, I'm here to answer those.

22 THE COURT: All right. Thank you.

23 MR. SUTHERLAND: Yes, ma'am.

24 THE COURT: All right. Has any member of a jury panel
25 ever been represented by any of the attorneys involved in this

1 case or anyone in their office or law firm?

2 (No response.)

3 THE COURT: Is any member of the jury panel related by
4 blood or marriage to or have a close personal relationship
5 with any of the attorneys involved in this case?

6 (No response.)

7 THE COURT: Has any member of the jury panel formed or
8 expressed an opinion about any issue or matter involved in
9 this case?

10 (No response.)

11 THE COURT: Does any member of the jury panel have any
12 aware -- are aware of any bias or prejudice towards either the
13 State or the defendant in this case?

14 (No response.)

15 THE COURT: Is there any member of the jury panel who is
16 a member of or contributor to any group which has its primary
17 concern with the promotion of law enforcement of victims'
18 rights? These groups can include, but are certainly not
19 limited to MADD, SADD, Mothers Against Drunk Driving, SADD,
20 Students Against Drunk Driving, Citizens Against Violent
21 Crime, any group that has its primary concern with the
22 promotion of law enforcement or victims' groups?

23 (No response.)

24 THE COURT: Is there any member of the jury panel who is
25 a member of or a contributor to any group who, as a primary

1 concern, is prisoners' rights, such as The Innocence Project?

2 (No response.)

3 THE COURT: Is any member of this jury panel or any
4 family member of a potential juror been prosecuted by the
5 Fifth Circuit Solicitor's Office? Has anyone been -- you or
6 your family member been prosecuted by the Fifth Circuit
7 Solicitor's Office?

8 (No response.)

9 THE COURT: Does any member of the jury panel know of any
10 reason whatsoever why he or she should not serve as a juror in
11 this case, with the particular emphasis being placed on your
12 ability to be fair and impartial to both the State and the
13 defendant? If so, please stand.

14 (No response.)

15 THE COURT: Is there any juror that needs to speak with
16 me privately?

17 (No response.)

18 THE COURT: All right. Give me one second.

19 Mr. Sutherland, you can come down here.

20 MR. SUTHERLAND: Oh, yes, ma'am.

21 THE COURT: All right. Come on up, ma'am. What's your
22 juror number, ma'am?

23 JUROR NO. 188: 188.

24 THE COURT: Thank you.

25 (Bench conference with the juror and attorneys was held

1 off the record.)

2 THE COURT: Yes, sir.

3 THE BAILIFF: What is your juror number?

4 JUROR NO. 76: 76.

5 THE BAILIFF: Juror No. 76.

6 THE COURT: Yes, ma'am?

7 (Bench conference with the juror and attorneys was held
8 off the record.)

9 THE COURT: And so the judge struck.

10 All right. Anything else from the State before we begin
11 with jury selection?

12 MR. SCOTT: No, your Honor.

13 THE COURT: Anything from the defendant?

14 MR. SUTHERLAND: He said no.

15 THE COURT: He said no. All right.

16 All right. Yes, ma'am, I'll turn it over to our clerk.

17 JURY SELECTION

18 THE CLERK: Yes, Your Honor. Ladies and gentlemen of the
19 jury panel, as I call your number, please come to the
20 microphone at the center of the courtroom, bringing any
21 personal belongings with you. State your number only and your
22 occupation, please.

23 Number 140. Just face that out to the audience.

24 JUROR NO. 140: Number 140. Sales manager for a chicken
25 producer.

JURY SELECTION

29

1 THE CLERK: What says the State?

2 MR. SCOTT: Please present the juror.

3 THE CLERK: What says the defense?

4 (No response.)

5 THE CLERK: Defense waives his strike.

6 Please have a seat in the jury box.

7 Number 7.

8 JUROR NO. 7: Number 7. Retired school music teacher.

9 THE CLERK: What says the State?

10 MR. SCOTT: Please present the juror.

11 THE CLERK: What says the defense?

12 (No response.)

13 THE CLERK: Defendant waives the strike.

14 Please have a seat in the jury box.

15 Number 207.

16 JUROR NO. 207: 207. Civil engineer.

17 THE CLERK: What says the State?

18 MR. SCOTT: Please present the juror.

19 THE CLERK: What says the defense?

20 (No response.)

21 THE CLERK: Defendant waives the strike.

22 Please have a seat in the jury box.

23 Number 76?

24 JUROR NO. 76: Number 76. Lab assistant.

25 THE CLERK: What says the State?

1 MR. SCOTT: Please present the juror.
2 THE CLERK: What says the defense?
3 (No response.)
4 THE CLERK: Defendant waives the strike.
5 Please have a seat in the jury box.
6 Number 147.
7 JUROR NO. 147: Number 147. A physician.
8 THE CLERK: What says the State?
9 MR. SCOTT: Please present the juror.
10 THE CLERK: What says the defense?
11 (No response.)
12 THE CLERK: Defendant waives the strike.
13 Please have a seat in the jury box.
14 Number 335.
15 JUROR NO. 335: 335. I'm a physician.
16 THE CLERK: What says the State?
17 MR. SCOTT: Please present the juror.
18 THE CLERK: What says the defense?
19 (No response.)
20 THE CLERK: Defendant waives his strike.
21 Please have a seat in the jury box.
22 Number 278.
23 JUROR NO. 278: Number 278. Currently unemployed.
24 THE CLERK: What says the State?
25 MR. SCOTT: Please present the juror.

JURY SELECTION

31

1 THE CLERK: What says the defense?
2 (No response.)
3 THE CLERK: Defendant waives his strike.
4 Please have a seat in the jury box.
5 Number 87. Face the --
6 JUROR NO. 87: I'm sorry. Christian counselor.
7 THE CLERK: What says the State?
8 MR. SCOTT: Please present the juror.
9 THE CLERK: What says the defense?
10 (No response.)
11 THE CLERK: Defendant waives the strike.
12 Please have a seat in the jury box.
13 Number 101.
14 JUROR NO. 101: Number 101. Registered nurse.
15 THE CLERK: What says the State?
16 MR. SCOTT: Please present the juror.
17 THE CLERK: What says the defense?
18 (No response.)
19 THE CLERK: Defendant waives his strike.
20 Please have a seat in the jury box.
21 Number 27.
22 JUROR NO. 27: Number 27. I'm a project manager.
23 THE CLERK: What says the State?
24 MR. SCOTT: Please present the juror.
25 THE CLERK: What says the defense?

1 (No response.)

2 THE CLERK: Defendant waives his strike.

3 Please have a seat in the jury box.

4 Number 6.

5 JUROR NO. 6: Number 6. Disabled.

6 THE CLERK: What says the State?

7 MR. SCOTT: Please excuse the juror from this trial.

8 Thank you.

9 THE CLERK: Please have a seat in the back of the
10 courtroom.

11 Number 166.

12 JUROR NO. 166: No. 166. I'm a cruise specialist.

13 THE CLERK: What says the State?

14 MR. SCOTT: Please present the juror.

15 THE CLERK: What says the defense?

16 (No response.)

17 THE CLERK: Defendant waives his strike.

18 Please have a seat in the jury box.

19 Number 360.

20 JUROR NO. 360: Juror No. 360. Medical assistant.

21 THE CLERK: What says the State?

22 MR. SCOTT: Please present the juror.

23 THE CLERK: What says the defense?

24 (No response.)

25 THE CLERK: Defendant waives his strike.

JURY SELECTION

33

1 Please have a seat in the jury box.

2 Please proceed to striking alternates. Strikes are going
3 to be one for the State, two for the defense.

4 Number 29.

5 JUROR NO. 29: No. 29. Retired financial institution.

6 THE CLERK: What says the State?

7 MR. SCOTT: Please present the juror.

8 THE CLERK: What says the defense?

9 (No response.)

10 THE CLERK: Defendant waives his strike.

11 Please have a seat in the jury box.

12 Number 214.

13 JUROR NO. 215: Number 214. Speech language pathologist.

14 THE CLERK: What says the State?

15 MR. SCOTT: Please present the juror.

16 THE CLERK: What says the defense?

17 (No response.)

18 THE CLERK: Defendant waives his strike.

19 Please have a seat in the jury box.

20 THE COURT: All right.. Anything else from the State?

21 MR. SCOTT: No, Your Honor.

22 THE COURT: Anything from the defense?

23 (No response.)

24 THE COURT: All right. And if he should -- defendant
25 shook his head no, for the record.

1 All right. Thank you.

2 Ladies and gentlemen of the jury, for those of you who
3 are not selected, I am going to send you back downstairs for
4 further instructions. I do want to thank you for your
5 cooperation and participation this morning, and if I do not
6 see you, have a wonderful week. Thank you.

7 (The remaining jurors exited the courtroom at 1:33 p.m.)

8 THE COURT: All right. Ladies and gentlemen of the jury,
9 thank you also for your cooperation and participation this
10 morning. I do realize that it is about 1:30 and it is
11 lunchtime, and you-all have not had lunch. So, what we're
12 going to do is I'm going to send you out for lunch for about
13 an hour and a half. There's some pretrial matters that I need
14 to take up outside of your presence anyway, and so this will
15 be a good time for you to go ahead and go to lunch.

16 I'll have you back at 3:00. If -- but just a couple of
17 things before I release you. The bailiffs are going to show
18 you the jury room. Please do not discuss the case with
19 anyone. The only thing that you know, I guess at this point,
20 are the allegations that I read to you from the indictment.
21 Please do not do any independent research regarding any issue
22 in this case.

23 Once we swear you in, you will be sworn as fair and
24 impartial jurors, and part of being fair and impartial jurors
25 is not to consider anything outside of the courtroom and to

1 only consider what is presented to you here in the courtroom.
2 So, please do not do any independent research, whether that's
3 in the library, on your computer, or your cell phones.

4 You will be allowed to have your cell phones when you are
5 released from court, but you cannot have them in the
6 courtroom, and you cannot have them in the jury room.

7 Let's see what else. You will be given some badges to
8 wear. You'll need to wear those badges that says "juror," so
9 that others in the courthouse will know that you are on the
10 jury and no one will try to speak to you.

11 We will receive you back at 3:00. Have a good lunch.
12 And then I'll give you some further instructions at that point
13 in time, but they'll have some comments for you.

14 All right. Thank you.

15 (The jury exited the courtroom at 1:37 p.m.)

16 THE COURT: All right. Any objections or exceptions to
17 the jury selection?

18 MR. SCOTT: No, Your Honor. None from the State.

19 THE COURT: Any from the defendant?

20 MR. SUTHERLAND: I believe he's just silent, Your Honor.

21 THE COURT: He's shaking his head no. Let the record
22 reflect -- and I'll have to do that, unless he's going to say
23 no.

24 Let the record reflect the defendant shook his head no.

25 All right. So, are we ready to do pretrial? You have

1 your officers here for your pretrial?

2 MR. SCOTT: I'm going to check real quick. Just that
3 Denno -- there's the one witness for Denno.

4 THE COURT: One in the back. One's in the back.

5 MR. SCOTT: So, the only thing is, I might want to
6 publish a portion of Miranda. So if we could just -- I think
7 there's a Smartboard next door. Two seconds --

8 THE COURT: All right. So you have a Denno hearing, and
9 what else do you have?

10 MR. SCOTT: That's all we're prepared for right now.
11 Potentially later, before these witnesses, we might have a
12 Biggers. Again, that would be two witnesses who are not here
13 today. It would be relatively quick.

14 THE COURT: All right.

15 MR. SUTHERLAND: Judge, if I able to smoke one real quick
16 while they're getting the thing in here?

17 THE COURT: Yes.

18 MR. SUTHERLAND: Thank you, Your Honor. All right. I'll
19 be right back.

20 (Pause in the proceedings.)

21 JACKSON v. DENNO HEARING

22 THE COURT: All right. We ready?

23 MR. SCOTT: Thanks. The State calls Kevin Loftis.

24 KEVIN LOFTIS,

25 after having been duly sworn, was examined and testified

1 to as follows:

2 THE CLERK: Thank you. Please have a seat in the witness
3 stand, and state your full name for the record.

4 THE WITNESS: Kevin Loftis.

5 DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q All right. Kevin, where are you employed right now?

8 A Federal Bureau of Investigation.

9 Q Back in November 2018, specifically on November 7th of
10 2018, where were you working?

11 A I was employed by Richland County Sheriff's Department.

12 Q Okay. And you were an investigator?

13 A Yes, sir.

14 Q Do you recall November 7th, 2018?

15 A Yes, sir, I do.

16 Q And that was a shooting that occurred at around

17 [REDACTED] Whispering Pines Road in Columbia?

18 A Yes, sir.

19 Q And at what point did you become involved in that case?

20 A I was the on-call investigator that night for homicides.
21 And I was called by -- shortly after the initial incident was
22 called in. The deputies got there, responded, found two
23 bodies that were -- one was deceased. One was, you know,
24 assumed to be close -- closely deceased. And so, of course, I
25 got a call to respond.

1 I initially went straight to the hospital for
2 Mr. Brennan, because they were working on him, was hoping to
3 get a statement. Also, we had another victim, Mr. Williams,
4 that was also at the hospital, and that's kind of...

5 Q Three victims there at night, and as we stand here today,
6 only one of them is alive; is that fair to say?

7 A Yes, sir, that's correct.

8 Q And the living victim is Taurus Williams, you said?

9 A Yes, sir.

10 Q And did you have an opportunity on the night of
11 November 7th or the next day to speak to Mr. Williams?

12 A Yes, sir.

13 Q And did you have an occasion to look in his phone at some
14 point?

15 A Yes, sir.

16 Q At some point, did you develop suspects that you would
17 want to speak with in regard to this shooting that happened
18 out on Whispering Pines Road?

19 A Yes, sir.

20 Q At some point, did you develop Choatte Neal as a suspect?

21 A Yes, sir.

22 Q Did you take him in and speak with him?

23 A Yes, sir.

24 Q And then, at some point, were you able to speak with a
25 Micah Brown?

1 **A** Yes, sir.

2 **Q** Okay. And what was the day that you spoke with Micah
3 Brown?

4 **A** Give me a second. Let me look at my notes to confirm.

5 **Q** I've got something, if this will help refresh your
6 memory. Take a look at that.

7 **A** Oh, yes, sir. November 9th.

8 **Q** November 9th?

9 **A** Of 2018.

10 **Q** All right. November 9th of 2018, you spoke with
11 Mr. Brown. You remember -- or did you take him into the
12 Sheriff's Department to speak with him?

13 **A** Yes, sir.

14 **Q** Had he been arrested at this point?

15 **A** Yes, sir.

16 **Q** So he was in detention; correct?

17 **A** Yes.

18 **Q** The sheriff's department -- describe the interview room
19 at the sheriff's department.

20 **A** The interview room is a -- I don't know -- 10 by 10, 12
21 by 12. It's not a large room. It's not a small room. It has
22 cameras and audio and video equipment in there to capture all
23 the things that are being said or viewed. So...

24 **Q** Okay. And were you able to capture this video and all
25 the new accounts as you're interviewing him?

1 **A** Yes, sir.

2 **Q** Initially, did Mr. Brown indicate a willingness to speak
3 with you?

4 **A** Initially, no, but he eventually did speak with us, yes,
5 sir.

6 **Q** Was he forced to speak with you?

7 **A** No, sir.

8 **Q** Did he appear to be under the influence of anything when
9 he spoke with you?

10 **A** No, sir.

11 **Q** Was he able to communicate freely with you?

12 **A** Yes, sir.

13 **Q** Did he appear to have any difficulty understanding your
14 questions to him?

15 **A** No, sir.

16 **Q** At some point, did you advise him of his Miranda rights?

17 **A** Yes, sir.

18 **Q** All right. How do you do that?

19 **A** Well, it's -- so that you're consistent, we have a sheet
20 that has the Miranda rights written out. And me, personally,
21 I like to read along each line and show it to him as I'm
22 reading. And then, once they understand the first part, you
23 know, then I go to the next part and read it. And then,
24 obviously, you ask them, do they understand everything, do
25 they still want to talk to me. And then we have them sign it,

1 just acknowledging -- the signature just acknowledges that I
2 did, in fact, read the Miranda rights to them and that they
3 understood them.

4 Q And I briefly showed you this. Let me have it marked
5 just for purposes of this pretrial hearing.

6 (State's Pretrial Exhibit No. 1, Miranda Rights Form, was
7 marked for identification.)

8 BY MR. SCOTT:

9 Q Okay. What is this? This is a -- it's labeled,
10 "Pretrial document." You recognize this document here?

11 A Yes, sir.

12 Q What is that?

13 A That's the investigation or advice of rights.

14 Q Okay. And what were the specific rights you advised
15 Mr. Brown of?

16 A Do you want me to read it?

17 Q He had the right to remain silent; correct?

18 A Okay. Well, so your rights, "Before we ask you any
19 questions, you have -- you must understand your rights." And
20 then I ask him, "You have the right to remain silent.
21 Anything you say can be used against you in court. You have
22 the right to talk to a lawyer for advice before we ask any
23 questions and to have a lawyer with you during any
24 questioning. If you can't afford a lawyer, one will be
25 appointed for you before any questioning if you wish. If you

1 decide to answer questions now without a lawyer present, you
2 still have the right to stop answering at any time. You also
3 have the right to stop answering at any time until you talk to
4 a lawyer."

5 And then I -- you know, and then I have them sign that,
6 and then, if they're willing to speak to me, I tell them the
7 waiver of rights is, "I have read this statement of my rights.
8 I understand what my rights are, and I'm willing to talk and
9 answer questions. I understand and know what I am doing. No
10 promises have been made to me. No pressure, no coercion of
11 any kind has been used against me."

12 And I oftentimes will ask them -- because sometimes, you
13 know, education level of people that we deal with on occasion
14 may not understand words like "coercion," and I'll ask and
15 make sure that they understand that word. And I'm sure the
16 videotape will show that.

17 Q This advisement of rights that you give him, that you
18 just described the process of it, did he ultimately signature
19 it?

20 A Yes, sir. He signed it.

21 Q Okay. And if we're looking at the screen there, you
22 talked about you interviewed him in a room that had video
23 footage. For pretrial purposes, that's State's No. 63. Do
24 you recognize what that is?

25 A Yes, sir.

1 (State's Hearing Exhibit No. 63, Interview Video of
2 Mr. Brown, was marked for identification.)

3 BY MR. SCOTT:

4 Q Okay. Is that -- what is that? A video that you
5 recorded on the night when you interviewed Mr. Brown?

6 A Yes, sir.

7 Q Okay.

8 MR. SCOTT: Your Honor, this is the advisement of rights
9 he just testified to.

10 THE COURT: All right.

11 MR. SCOTT: I'm going to play State's 63, just a portion
12 of Miranda.

13 (State's Exhibit No. 63 played.)

14 BY MR. SCOTT:

15 Q All right. Did that capture the advisements of rights
16 and -- a little bit off screen, but was that where he was
17 initialling, after you stood up?

18 A I believe so, yes, sir.

19 Q Okay. Thereafter, you read him his rights. Does he
20 proceed to give you an account of what happened that night?

21 A Yes, sir.

22 Q Okay. And did you coerce him at all into giving that
23 statement?

24 A No. No, sir.

25 Q Did you offer him any -- any promise or reward?

1 **A** No, sir.

2 **Q** Did you threaten him in any way?

3 **A** No, sir.

4 **Q** And you clearly advised him that he was under arrest at
5 that point, and it's pretty obvious he's detained; he's in
6 handcuffs. But before you interrogated him, you Mirandized
7 him and informed him of all his rights?

8 **A** Yes, sir.

9 **Q** And he acknowledged that?

10 **A** Yes, sir.

11 **Q** Thank you.

12 MR. SCOTT: That's all the question I have for
13 Mr. Loftis, Your Honor.

14 THE COURT: All right. Any questions from -- any
15 cross-examination from the defendant?

16 MR. SUTHERLAND: Your Honor, Micah has informed me that
17 he intends to remain silent throughout the remainder of the
18 proceedings, Judge.

19 THE COURT: All right. Well, I'm going through opening
20 process, so...

21 MR. SUTHERLAND: Yes, ma'am.

22 THE COURT: He can say yes or no.

23 THE DEFENDANT: I'll remain silent, Your Honor.

24 THE COURT: All right. You may step down, sir.

25 All right. I'll be glad to hear from you.

1 MR. SCOTT: Thank you. We just -- clearly, he was
2 detained, as Loftis indicated. Before they began any of the
3 questioning, he was advised of his Miranda rights.
4 Investigator Loftis indicated he was not under the influence.
5 He appeared to understand the questions and his rights as they
6 were read to him. He didn't waive those rights. And Your
7 Honor has seen the advisement of rights form with his
8 signature on it. It appears to be clear in the video that
9 he's lucid, and he does communicate freely with Investigator
10 Loftis. So before giving his account of events that night, he
11 was properly Mirandized, and we'd ask Your Honor to admit
12 certain portions of his statement that may come out at trial.

13 THE COURT: All right. Thank you.

14 Based on that, I'm assuming he has no response?

15 MR. SUTHERLAND: Yes, ma'am.

16 THE COURT: All right. Thank you.

17 Based on the -- in looking at the -- his voluntariness, I
18 do find that the defendant in this case was advised of his
19 Miranda rights and he understands -- he stated that he
20 understood what he was being asked. He was not being forced
21 to speak. I did not see any evidence of any coercion. And
22 based on what the Court has before it and the totality of the
23 circumstances, I do find that the statement was voluntarily
24 given by the -- based on a preponderance of the evidence that
25 the statement was voluntarily given by the defendant, and the

1 statement will be admitted.

2 All right. Any other motions?

3 MR. SCOTT: Not at this point, Your Honor.

4 THE COURT: Anything from the defense? And if he doesn't
5 say anything, I'll just assume that means no.

6 All right. So the jury will be back at 3:00. I thought
7 we had more -- I would have told them 2:30, but I thought we
8 had other motions. So, I'll start with the introduction just
9 so -- my introductory remarks, and then you'll be ready -- the
10 jury will first hear opening statement and your first witness.

11 Mr. Brown, you have the right to give an opening
12 statement, although you do not have to if you choose not to.
13 And you don't have to make that decision now. I'll -- the
14 State will make an opening statement, and then I'll ask, "Do
15 you have an opening statement?" If he doesn't say anything,
16 then I will assume that he does not.

17 All right? So we will see you-all back at 3:00.

18 And if you could return this to the court reporter.

19 (A recess was taken from 2:02 p.m. to 3:15 p.m.)

20 THE COURT: All right. Is there anything I need to take
21 up before I bring the jury in?

22 MR. SCOTT: Nothing from the State, Your Honor.

23 THE COURT: All right. So, I will -- once again, we'll
24 bring the jury in, and we'll swear the jury. I will give
25 Mr. Scott or Mr. Fowler an opportunity to open, and then I

1 will give Mr. Brown an opportunity. If he doesn't wish to,
2 we'll keep moving. All right?

3 Let's bring them in.

4 (At 3:16 p.m., the jury enters the courtroom.)

5 THE COURT: All right. Thank you.

6 All right. Ladies and gentlemen of the jury, I hope that
7 you had a good lunch. At this time, we are ready to begin the
8 trial of the case of the State of South Carolina versus Micah
9 Christian Brown. But before we do that, I will ask the clerk
10 to swear the jurors.

11 THE CLERK: Yes, Your Honor.

12 Ladies and gentlemen of the jury, please stand and raise
13 your right hand and be sworn. After this oath, please
14 acknowledge by answering "I do."

15 (The jury was duly sworn.)

16 ALL JURORS: I do.

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: All right. Thank you.

19 All right. Ladies and gentlemen of the jury, what I will
20 now say is intended to serve as an introduction to the trial
21 of this case. These remarks are not a charge on the law in
22 this case. I will instruct you on the law applicable to this
23 case at the end of the trial before you retire to consider
24 your verdict. This is merely an explanation of the procedure
25 that we will follow in the trial of this case so that you may

1 better understand what may be happening.

2 You are not to take any notes during the trial. The
3 defendant in this case, by an indictment filed in this court,
4 is charged with the crimes of attempted murder and murder --
5 two counts of murder, the elements of which I will explain to
6 you later.

7 The indictments are simply, as I told you earlier, the
8 charge by which the case is brought in to court and is not in
9 any sense evidence of any of the allegations it contains. The
10 defendant in this case has pled not guilty to these
11 indictments. The State, therefore, has the burden of proving
12 each of the elements of the indictments beyond a reasonable
13 doubt, and it will be your duty, ladies and gentlemen, to
14 decide whether the State has met that burden.

15 Your purposes as jurors is to find and determine the
16 facts, and you are the sole judges of the facts. If, at any
17 time, I make any comment regarding the facts, you must
18 disregard it. You are to determine the facts from the
19 testimony you hear and the other evidence introduced in court.
20 It is up to you to determine the inferences which you feel may
21 properly be drawn from the evidence.

22 It is especially important that you perform your duty of
23 determining the facts diligently and contentiously because,
24 ordinarily, there is no way to correct an erroneous
25 determination of the facts by a jury. But, on the other hand,

1 and with equal emphasis, the same law that makes you the
2 judges of the facts makes me the judge of the law. The law as
3 given by the Court is the other law you may consider. You
4 must accept and follow it even though you may disagree with
5 it. I cannot tell you what the facts are, and you cannot
6 disagree with me about what the law is or what the law should
7 be. Your job is to take the law as I give it to you and apply
8 it to the facts as you find them from the testimony of the
9 witnesses and any other evidence that is introduced. After
10 doing that, you will render your verdict, a verdict under the
11 solemn oath that you just took as jurors.

12 Ladies and gentlemen of the jury, until I tell you that
13 you may begin to deliberate, you must not discuss this case
14 with anyone, including your fellow jurors, friends, family
15 members, and anyone involved in the case. The attorneys and
16 the parties in this case have been advised that they are not
17 to talk to you at all. So, if you see anyone involved in the
18 case and they do not even say hello, they are not being
19 unfriendly; they are just following my instructions.

20 You must decide this case -- during the trial, please do
21 not listen -- during the trial, do not read, listen to, or
22 watch any new reports about this case. This includes anything
23 that may be in the newspaper or on the internet, radio, or
24 television. You must not consider anything you may have read
25 or heard about the case outside of the courtroom, whether

1 before or during the trial.

2 Information on TV or radio or internet or from other
3 sources might be wrong or incomplete. In our judicial system,
4 it is important that you are not influenced by anything or
5 anyone outside of this courtroom. If you become aware of
6 another juror's violation of these instructions, please inform
7 me immediately. It's important that you keep an open mind and
8 not decide any issue in the case until all of the evidence has
9 been presented, the parties have made their closing arguments,
10 and I have instructed you on the law in this case.

11 It is your solemn responsibility to determine the guilt
12 or innocence of the defendant, and your verdict must be based
13 solely on the evidence as it is presented to you in this trial
14 and on the law as I instruct you during and at the close of
15 the trial.

16 In just a moment, the solicitor will make what is called
17 an opening statement in which the solicitor will explain to
18 you the issues in this case or at least what the solicitor
19 thinks the issues are in this case. The defendant may also
20 make an opening statement, although he is not required to do
21 so.

22 What the attorneys tell you during their opening
23 statements is not evidence in this case. It is only their
24 contention as to what the issues are. The evidence in this
25 case will be presented to you by the testimony of sworn

1 witnesses from the witness stand and/or by exhibits that may
2 be introduced into evidence.

3 From time to time during the trial, you may hear one of
4 the lawyers say something like, "Your Honor, I believe we have
5 a question of law or a matter of law to discuss with you" or
6 "Your Honor, may we approach the bench?" Or sometimes I
7 myself might find it necessary to excuse you from the
8 courtroom for a short while so that the attorneys and I can
9 discuss a matter of law. The reason for this is because you
10 are the judges of the facts in this case and sometimes, when I
11 am discussing matters of law with the attorneys, it may be
12 necessary for me to comment as to a fact in connection with
13 ruling whether or not a particular law applies.

14 I am not supposed to tell you what I think the facts are,
15 so I will excuse you from the courtroom while these
16 discussions take place so that in no way you will be
17 influenced by anything that I may say or do in connection with
18 the facts. You must decide whether or not the testimony of
19 the witnesses in this case is believable. It would be my
20 responsibility to rule as a matter of law as to whether
21 certain testimony is admissible at all or not, but once the
22 testimony is admitted, whether or not you believe it is solely
23 for you to determine.

24 In deciding whether to believe a witness, you have the
25 right to consider the interest of any witness, the bias of any

1 witness, the prejudice of any witness, the opportunity for the
2 witness to have seen the manners and things about which the
3 witness may testify, and the way the witness acts on the
4 witness stand.

5 You have the right to consider anything that is in the
6 record that will help you evaluate the testimony of the
7 witnesses. That means that it is your duty to pay close
8 attention to these witnesses, to observe the witnesses, to
9 listen to the witnesses, and to pay close attention to the
10 attorneys and the Court. Please do not let your thoughts
11 wander but give strict attention to the testimony in this case
12 so that, at the end of all the testimony, after the arguments
13 of counsel and the charge on the law by the Court, you will be
14 able to apply the law to the facts and render a verdict.

15 In order to preserve everyone's rights, I will give the
16 parties an opportunity to object to anything that I have said.

17 Any objections or exceptions from the State?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: Any from the defendant?

20 (No response.)

21 THE COURT: Thank you.

22 All right. Ladies and gentlemen of the jury, at this
23 time, we will begin the trial. Once again, we will start with
24 the State and their opening statement, and then I will see if
25 Mr. Brown wishes to have an opening statement, although he is

1 not required to do so.

2 Yes, sir. Mr. Fowler? Yes, sir.

3 MR. FOWLER: Thank you, Your Honor. May it please the
4 Court?

5 OPENING STATEMENT ON BEHALF OF THE STATE

6 MR. FOWLER: On November 7th, 2018, exactly four years
7 ago today, the defendant, Micah Brown, extinguished two lives
8 and tried his hardest to end the third. Micah Brown and his
9 partner, Choatte Neal, set up an execution. His only
10 intention that night was to kill.

11 On that night, his partner, Choatte Neal, got into a car
12 with Taurus Williams, Jasmine Richardson, and Brennan
13 Montgomery. Now, those names are important, because they're
14 the reason we're here today, so I'm going to go over them
15 again.

16 Taurus Williams was the driver of the vehicle. Jasmine
17 Richardson was riding in the passenger seat. Brennan
18 Montgomery was in the back seat. Choatte Neal entered the
19 vehicle, and they drove all the way from down in lower
20 Richland up past North Main Street and picked up Micah Brown.
21 Micah Brown got in the middle seat.

22 Micah Brown then directed the driver of the car to
23 Whispering Pines Road. Now, let me tell you about Whispering
24 Pines Road, because you're going to hear a lot about it today.
25 Folks, it is like something out of a movie. It's a secluded

1 dirt road, very few houses, surrounded by a thick treeline,
2 almost like a wall of darkness. It's late at night, and it's
3 raining.

4 As they pull onto Whispering Pines Road and parked their
5 vehicle, Choatte Neal and Micah Brown exited the vehicle.
6 Micah Brown stuck his hand back in the open passenger door and
7 opened fire.

8 Brennan Montgomery, the backseat passenger was stuck --
9 was struck in the back of the head. He later died on an
10 operating table.

11 Jasmine Richardson was able to get out of the vehicle,
12 but she was forced to the ground, and then Micah took the
13 pistol that he used to kill Brennan Montgomery and beat her
14 with it. And he beat her with that pistol so hard that that
15 pistol broke in half.

16 Taurus Williams survived. Some people may consider that
17 to be a blessing. Let me tell you what he went through before
18 he could realize that blessing. He was shot multiple times by
19 the defendant, Micah Brown. He then floored his gas pedal in
20 an attempt to escape and flew down that dark, dirt road --
21 Whispering Pines Road -- wrecked his vehicle. When he came
22 to, he fought and clawed and drug his way several hundred
23 yards, multiple gunshot wounds, back up that dirt road until
24 he found a house with a light on it. He crawled onto that
25 porch and tried his hardest to get somebody to answer, but no

1 one was home.

2 What happened after that was when the defendant, Micah
3 Brown, returned with his partner, Choatte Neal. They found
4 Taurus still alive, and so they tried to finish the job. They
5 found a metal pole and beat Taurus -- both of them -- until he
6 quit moving. Taurus was left for dead, surrounded by the
7 carnage and death of his two friends that accompanied him on
8 that ride that night.

9 You're going to see what Micah Brown's intent was that
10 night. It will be evident in the gunshot wound to Brennan
11 Montgomery's head. It's going to be evident in Jasmine
12 Richardson's face -- mutilated, torn, hit so hard that he
13 broke the pistol in half.

14 Now, during this trial, we expect that you're going to
15 hear about that gun and what he did with it. His partner,
16 Choatte Neal, is going to tell you -- or we expect him to tell
17 you how he beat Jasmine Richardson with that gun, then drug
18 her to the other side of that dirt road and used that metal
19 pole to finish the job. We expect him to tell you why he
20 thinks this happened.

21 You're also going to hear from other witnesses who are
22 going to tell you about how Micah Brown was acting after he
23 just took the lives of two people and tried his hardest to
24 take the life of a third. You're also going to see a video
25 that shows Taurus Williams being beaten by the defendant,

1 Micah Brown, repeatedly, and then Micah Brown handing that
2 pole to his partner, Choatte Neal, who then continues to beat
3 Taurus Williams. They beat him until he quit moving, thought
4 he was dead, and left him there with his two dead friends.

5 When you see that video, Micah Brown's intention that
6 night is going to be clear to you. During this trial, you'll
7 see that Micah Brown shot Brennan Montgomery in the back of
8 the head, beat Jasmine Richardson to death, not only with his
9 pistol but with a metal pole, and he shot Taurus Williams
10 multiple times and tried to finish him off with that same
11 metal pole that he killed Jasmine with.

12 Now, ladies and gentlemen, this is going to be difficult.
13 You're going to see a lot of horrible things. It's going to
14 be tough. But it's not nearly as bad as what the defendant,
15 Micah Brown, put Taurus Williams, Jasmine Richardson, and
16 Brennan Montgomery through on that night. At the end of this
17 trial, you will see what Micah Brown's intentions were. You
18 will be able to find him guilty of murdering Jasmine
19 Richardson, Brennan Montgomery, and attempting to murder
20 Taurus Williams.

21 Thank you.

22 THE COURT: Any opening from the defendant?

23 (No response.)

24 THE COURT: All right. Thank you.

25 Call your first witness.

1 MR. SCOTT: The State intends to call the first witness,
2 Ms. Dorasha Swain. I am told she was in the process of
3 parking her car, so let me -- if not, we can call another one
4 out of order, but I think she's here.

5 WILLIAM SLEMP,
6 after having been duly sworn, was examined and testified
7 to as follows:

8 THE CLERK: Thank you. Please have a seat in the witness
9 stand, and state your full name for the record.

10 THE WITNESS: My name is William Slemp.

11 THE CLERK: Spell your last name, please.

12 THE WITNESS: S-l-e-m-p.

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q Thank you for joining us, Mr. Slemp. Are you familiar
16 with the incident that we're here for today?

17 A I am.

18 Q Okay. What was your occupation on November 7th, 2018?

19 A I was the shift supervisor in Region 3, corporal with the
20 Richland County Sheriff's Department.

21 Q And tell me how you came to be involved in this incident.

22 A I was actually the responding officer to this incident.
23 They sent me the call because I was the closest officer within
24 that area.

25 Q And tell me how they -- how did they send you that call?

1 **A** I was located on Fairfield Road, doing some paperwork,
2 which is in Richland County, just less than a mile from the
3 main road that the incident had taken place from.

4 **Q** What did the call say that you received?

5 **A** The call said that there was a homeowner on her TV system
6 -- her security system watching an incident taking place on
7 her porch, that somebody was getting beat. And then it was
8 told that she was seeing it remotely. So we left where I was
9 sitting, and, within three minutes, arrived to the Whispering
10 Pines Road and Sharpe Road intersection.

11 **Q** Okay. So you said Whispering Pines Road, which is where
12 this incident occurred?

13 **A** Correct.

14 **Q** What county is that in?

15 **A** That's in Richland County.

16 (State's Exhibit No. 65, Aerial Photo of Whispering Pines
17 Road, was premarked for identification.)

18 BY MR. SCOTT:

19 **Q** I'm going to show you what's been premarked as
20 State's 65. Can you tell me what that is, Mr. Slemp?

21 **A** Yes. That is an aerial shot of Whispering Pines Road and
22 Sharpe Road.

23 **Q** And that's where this incident occurred?

24 **A** Correct.

25 **Q** All right. So, when you responded, can you tell us what

1 you observed?

2 **A** I made -- as I made a left-hand turn onto Whispering
3 Pines, it was very dark and raining. The road is very hard to
4 see down, especially at night. I observed what appeared to be
5 somebody laying in the middle of the road a few hundred -- or
6 maybe a hundred -- a few hundred feet down the road. I parked
7 my vehicle and exited and confirmed that it was somebody
8 laying in the road. At that point, another deputy pulled up
9 behind me, and I asked him for a first aid kit.

10 We were trying to speak to the first individual, who was
11 laying in the road, and could not get any response other than
12 maybe a grunt. We realized it was some type of injury, so we
13 immobilized him until EMS could get there to transport him.

14 **Q** And what were your observations about that victim's --

15 **A** That he was lying on his back. He had no motor skills,
16 like movement of his hands. He could not say anything. The
17 only thing he could do was make a grunt. So we determined
18 that there was some kind of head or neck injury. Did not
19 know. I immobilized him until EMS could pick him up. But as
20 far as just maybe a grunt, he was unresponsive.

21 **Q** And what did you do after EMS came?

22 **A** After EMS came -- my master deputy showed up at the same
23 time EMS did. As EMS was loading the first victim into the
24 ambulance, my master deputy noticed a second victim to the
25 left side of my driver's door. We began to render aid to her

1 as well as EMS, and I believe she was pronounced deceased on
2 the scene.

3 Q I'm going to show you what's been marked as State's 1
4 through 8.

5 (State's Exhibit Nos. 2 through 8, Photographs, was
6 marked for identification.)

7 BY MR. SCOTT:

8 Q Why don't you take a look at these and tell me if you
9 recognize what those are.

10 A No. 8 is a shot from what would have been the front of my
11 vehicle to where Victim 1 was laying on the road ditch. 7 is
12 a picture of the scene from the left side of the vehicle as
13 well as -- and 6 is from what would have been the front of my
14 vehicle. 5 is the same. 4 is a shot from where Victim 1 was
15 laying on the road. Picture 3 shows the spot where Victim 1
16 was laying and the corner of where Victim 2 was located. 2
17 shows where Victim 2 was located, and the bottom corner shows
18 where Victim 1 was located. And No. 1 shows my patrol car and
19 Victim 2 to the left of my patrol car.

20 Q Is that a fair and accurate representation of the scene
21 as you saw it that night?

22 A Yes.

23 MR. SCOTT: Your Honor, at this time, I would move to
24 have State's 1 through 8 admitted into evidence, as well as
25 State's 65.

1 THE COURT: Any objection?

2 (No response.)

3 THE COURT: All right. 1 through 8 will be entered
4 without objection. And 65.

5 (State's Exhibit Nos. 1 through 8 and 65 was received
6 into evidence.)

7 MR. SCOTT: Your Honor, may I publish to the jury?

8 THE COURT: Yes.

9 MR. SCOTT: And could I have the witness step off the
10 stand for a minute?

11 BY MR. SCOTT:

12 Q Mr. Slemp, I'm going to get you to kind of help orient
13 our jurors here. Just give them an idea of where everything
14 was.

15 MR. SCOTT: Can everybody see all right?

16 BY MR. SCOTT:

17 Q All right. I'm going to show you State's 65, which was
18 that aerial shot that you looked at. There we go. Okay. All
19 right.

20 And so, this is Whispering Pines Road where you were at
21 that night?

22 A Right. This was Sharpe Road and Whispering Pines. The
23 road was at this end of Sharp, is where I was located when I
24 got the call.

25 Q Okay. And I think you mentioned that you saw the male

1 victim on the right side of the road first?

2 **A** Yes. Victim 1, as we pulled in, was right -- right here.
3 Right in here.

4 **Q** I'm going to show you State's 3. And so, can you point
5 out where that is?

6 **A** It's that right there. The picture was taken from this
7 angle --

8 **Q** Right.

9 **A** -- looking down the road right there.

10 **Q** And this is where the male victim was laying?

11 **A** Correct.

12 And that, again, is the -- all the stuff around there is
13 gauze and first aid kit material. This is where his head was
14 and his feet was facing that direction.

15 **Q** Same spot?

16 **A** Yeah.

17 **Q** All right. And then I'm going to show you State's 1 and
18 2, which are pictures of a female victim which you said was on
19 the opposite side of the road?

20 **A** Yes. My car was here. Victim 1 was over here.

21 Victim 2, there's actually some shrubbery right here in the
22 corner. She was right there adjacent to my car.

23 **Q** And those are the pictures of --

24 **A** Correct. This is the patrol car, Victim 2. That was
25 right in that --

1 Q I'm actually going to pull up the picture. I'm going to
2 show you State's 1. Just tell us one more time what that is.

3 A This is my patrol car. This is Victim 2, and 1 would be
4 right in front of the -- the front side of my car on the
5 opposite side of the road.

6 Q Okay. And you said you discovered her second; correct?

7 A My master deputy actually discovered her second. It's,
8 obviously, lit up because of where the camera was taken, but
9 that -- you can see how dark the road is. I saw this victim,
10 kept my focus on this victim, make sure he was good, and as
11 the master deputy pulled in, he noticed her off to the side.

12 Q Okay. Thank you, Mr. Slemp. You can get back on the
13 stand if you want.

14 And I'm going to show you what's been marked as
15 State's 13. And tell me what that is.

16 A Yes. That is the handgrip to a pistol that was located
17 in the -- in the road.

18 Q And you saw this that night?

19 A Yes.

20 Q Okay?

21 A I believe that was found subsequent -- after my car had
22 pulled forward or moved, my vehicle, it was located in the
23 middle of the road right by the subject.

24 Q And this is a fair and accurate representation --

25 A Yes.

1 Q -- of that?

2 MR. SCOTT: Your Honor, I'm going to move State's 13 into
3 evidence.

4 THE COURT: Any objection?

5 (No response.)

6 THE COURT: It will be entered without objection.

7 (State's Exhibit No. 13, Photos of Pistol Handgrip, was
8 marked for identification and received into evidence.)

9 MR. SCOTT: And then I'm going to publish that, Your
10 Honor.

11 BY MR. SCOTT:

12 Q All right. So, one more time, tell us what that is.

13 A That is a -- the handgrip from a broken pistol that was
14 located in the middle of the road -- the middle of Whispering
15 Pines Road.

16 Q And you said you actually had parked on top of it?

17 A Yes. It wasn't -- we never noticed it to begin with,
18 with rendering aid to everybody, but as we backed the cars up
19 so that crime scene could go in there and investigate it, I
20 believe it had been right under the front bumper of my
21 vehicle.

22 Q Okay. So, after you rendered aid to everyone and EMS
23 arrived, what did you do next?

24 A I contacted -- I had the master deputy go -- he went down
25 to the address of the caller and tried to make contact at the

1 house. And this is before we had realized it was remote.
2 Tried to make contact at the house. Master deputy noticed
3 Victim 3 on the porch, and I was coordinating with our desk
4 sergeant and headquarters to get a lab unit and a crime scene
5 unit to the location.

6 Q Was there any other involvement that you had with this
7 case?

8 A No, sir.

9 Q And, once again, this was in Richland County?

10 A Correct. It was in Richland County.

11 MR. SCOTT: I have no further questions, Your Honor.

12 THE COURT: Any cross-examination?

13 (No response.)

14 THE COURT: If not, sir, you may step down.

15 MR. SCOTT: Your Honor, at this point, I'm going to call
16 Dorasha Swain.

17 THE COURT: All right.

18 THE CLERK: Raise your right hand.

19 THE WITNESS: Raise my right hand?

20 THE CLERK: Yes. Raise your right hand and place your
21 left hand on the Bible.

22 THE WITNESS: I'm sorry. Okay.

23 DORASHA SWAIN,

24 after having been duly sworn, was examined and testified
25 to as follows:

1 THE CLERK: Please have a seat in the witness stand and
2 state your full name for the record and please spell your
3 first name.

4 THE WITNESS: Dorasha Swain.

5 THE CLERK: Spell your first name, please.

6 THE WITNESS: D as in "David," o-r-a-s-h-a.

7 DIRECT EXAMINATION

8 BY MR. SCOTT:

9 Q Dorasha, let me ask you, back in November of 2018 --
10 November 7th, to be specific -- were you living at [REDACTED]
11 Whispering Pines Road?

12 A I was.

13 Q Okay. This is State's No. 18. Is that how your house
14 looked back then or your front porch?

15 A Yes.

16 MR. SCOTT: Your Honor, the State offers State's 18 for
17 admission into evidence.

18 THE COURT: Any objection?

19 (No response.)

20 THE COURT: 18 will be entered without objection.

21 (State's Exhibit No. 18, Photo of Exterior of House, was
22 marked for identification and received into evidence.)

23 BY MR. SCOTT:

24 Q All right. Dorasha, if you look at State's No. 18, sort
25 of in the upper left corner, there's a little black box beside

1 one of the windows.

2 A Mm-hmm.

3 Q You can see it in this picture. What is that?

4 A That's my camera -- security camera.

5 Q Okay. And how was that activated back then?

6 A I had it through my -- it was a home security called
7 Digital Life.

8 Q Okay. Was it motion sensed or --

9 A Motion sensed, yes.

10 Q Okay. And November 7th -- we don't really need to know
11 where you were, but were you out of town on November 7th,
12 2018?

13 A I was.

14 Q Okay. And so you wouldn't have been at your house on
15 that particular date?

16 A No, sir.

17 Q Okay. Do you remember at some point, while you were out
18 of town, getting an alert that your camera had picked up some
19 activity?

20 A Yes.

21 Q And how did you watch it? On your phone? Or how was it
22 transmitted to you?

23 A I pulled it up on my phone --

24 Q Okay.

25 A -- initially, and then I pulled it up on my computer as I

1 talked with law enforcement.

2 Q Okay. Can you describe what you were seeing on that
3 video?

4 A I'm going to make it --

5 Q Let me ask you, was it something that was concerning to
6 you?

7 A It was. My initial call was 911, which went straight to
8 the area I was in, which was Clemson. And I had to call the
9 (indiscernible) number for Richland County, which was about
10 maybe ten minutes in. The initial alarm started well before I
11 actually started to watch it because usually it's a bird, and
12 this time it just kept going. So I decided to take a look and
13 there was a guy on the porch. I guess it was a guy that
14 was -- what looked like a physical fight. It didn't look like
15 any guns or anything were involved, just the -- just the
16 physical fight, by the time I got to law enforcement. And
17 that's all you can see, what was happening on the actual
18 porch.

19 Q And you didn't know any of these people; correct?

20 A No. I didn't know any of them.

21 Q But -- did you say -- what time was it; do you recall?

22 A It had to have been somewhere around 10:00 something
23 because I was listening to a live sermon on Facebook, so it
24 had to have been around 10:30ish, 11 p.m.

25 Q Okay. And so you said, once you were able to meet with

1 law enforcement, you turned this particular video over to
2 them?

3 A I did.

4 Q And they requested it from you; right?

5 A That's correct.

6 Q You really didn't have a choice.

7 A Mm-hmm.

8 Q State's 64, do you recognize that? Is that the video
9 that was recorded that night?

10 A Yes.

11 Q Okay.

12 MR. SCOTT: Your Honor, the State moves to admit 64.
13 That's going to be the footage from the camera that she
14 testified to, and we'd ask to publish at this time.

15 THE COURT: Any objection?

16 (No response.)

17 THE COURT: It will be entered without objection.

18 (State's Exhibit No. 64, Security Camera Video, was
19 marked for identification and received into evidence.)

20 (Video plays.)

21 BY MR. SCOTT:

22 Q Okay. Thank you, Dorasha. That was the video you turned
23 over to law enforcement?

24 A Yes.

25 Q And you were out of town during this entire encounter;

1 correct?

2 **A** Yes.

3 **Q** This home that this took place, that was in Richland
4 County?

5 **A** Yes.

6 **Q** Thank you. That's all questions I have.

7 THE COURT: All right. Thank you.

8 Any questions on cross-examination?

9 (No response.)

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

11 Any objection to this witness being excused?

12 MR. SCOTT: None from the State, Your Honor.

13 THE COURT: All right, ma'am. You're free to leave.

14 Call your next witness.

15 MR. SCOTT: Your Honor, the State calls Michael Wenzel.

16 MICHAEL WENZEL,

17 after having been duly sworn, was examined and testified
18 to as follows:

19 THE CLERK: Thank you. Please have a seat in the witness
20 stand and state your full name for the record.

21 THE WITNESS: Michael Wenzel.

22 DIRECT EXAMINATION

23 BY MR. SCOTT:

24 **Q** Okay. Michael, November 7th of 2018, did you have
25 occasion to help, I guess, investigate a scene in and around

1 █████ Whispering Pines Road?

2 **A** I did.

3 **Q** Okay. And could you explain, I guess to the jury, where
4 is Sharpe Road and Whispering Pines Road in relation to where
5 we are?

6 **A** If you're familiar with Fairfield Road, Sharpe Road runs
7 off of Fairfield Road, between Fairfield and Wilson Boulevard.

8 **Q** Okay. I guess the way from here, I have been going,
9 like, up North Main and then I'll veer left on -- what's that
10 road called?

11 **A** North Main -- North Main turns into Wilson Boulevard so
12 you can veer left on to Fairfield.

13 **Q** That's Fairfield. Okay. And you just ride that out a
14 few miles, and that's about where we're talking about?

15 **A** Cross over Route 20 and it's maybe two miles or so, three
16 miles, down on the right.

17 **Q** Okay. How would you describe Whispering Pines Road?

18 **A** Rural. There's maybe one or two houses on that road.

19 **Q** And then what else is down the road?

20 **A** At the end of the road, there's a -- there was a large
21 wooded area with a pond.

22 **Q** Okay. Is it fair to say that it kind of horseshoes --
23 like you can take -- you can go off Sharpe Road and take
24 Whispering Pines Road and it will horseshoe back around and
25 then come back on to Sharpe Road?

1 **A** It does. I think it turns into -- you can go a couple of
2 ways, I believe. One is private property. But if you're
3 going down Whispering Pines from Sharpe Road, if you take a
4 left, there's Red Hill Road. That's another little dirt road
5 that circles back to Sharpe Road. And if you keep going,
6 there is -- it's gated, the private property, but I believe
7 the trail road goes around to another road that comes back to
8 Sharpe Road the other way.

9 **Q** All right. Your initial approach, though -- State's 65
10 that's been admitted into evidence -- would this have been the
11 approach you took to get to the scene initially?

12 **A** Yes. I would have come in off Sharpe Road and turned on
13 to Whispering Pines.

14 **Q** Okay. And were you in here just a minute ago when Slemp
15 was testifying?

16 **A** No, sir.

17 **Q** Okay. Tell me what your initial observations were when
18 you entered Whispering Pines Road from that direction.

19 **A** They had already established the crime scene. There were
20 several deputies on scene.

21 **Q** Okay. At some point, did you get the idea, like, you
22 know, Well, I'll keep riding on down Whispering Pines Road
23 past this scene and see what's down there?

24 **A** I didn't go through the scene. I went around to Red Hill
25 and went up and around the scene. I didn't want to

1 contaminate the evidence. And, yeah, I came to the
2 intersection of Red Hill Road and Whispering Pines.

3 Q And 65 shows -- this is the area you guys saw a minute
4 ago, but that's just kind of -- that would have been the turn
5 off Sharpe Road you took to get to the scene?

6 A Correct.

7 Q Okay. But then you were just talking about you decided
8 to go a different way?

9 A Mm-hmm, to the other side of the -- so, yeah, I guess the
10 crime scene kind of included some of the roadway in front of
11 the house there on Whispering Pines. So I went around Red
12 Hill Road to the other end of Whispering Pines.

13 Q Okay. I see. And this is [REDACTED] Whispering Pines Road
14 that was --

15 A Yes, sir.

16 Q -- where the video was captured, I think?

17 A Yes, sir.

18 Q Look at 66. Is that -- what is that?

19 A That is Whispering Pines Road looking toward, I guess,
20 Red Hill and the dead end.

21 Q That's basically the view you would be looking at if you
22 looked straight down that road?

23 A Yes, sir.

24 MR. SCOTT: Your Honor, the State offers State 66 for
25 admission into evidence.

1 THE COURT: Any objection?

2 (No response.)

3 THE COURT: It will be entered without objection.

4 (State's Exhibit No. 66, Photo of Whispering Pines Road,
5 was marked for identification and received into evidence.)

6 BY MR. SCOTT:

7 Q All right. So is it true that right over here -- it's
8 kind of covered up by some trees -- that's [REDACTED] Whispering
9 Pines Road?

10 A Yes, sir.

11 Q To the right over here, what's all over there on that
12 side of the road?

13 A It looks like a playground.

14 Q A playground?

15 A That's what I would describe it as. Or a little park.

16 Q So your testimony is you continued on down this road that
17 night?

18 A No. I went back out to Sharpe Road and I went down
19 Sharpe Road a little farther, and there's a road called -- I
20 believe it's called Red Hill Road.

21 Q Okay.

22 A And it intersects down there about where you can see the
23 end of that picture on the road. It intersects down there.

24 Q Okay. And it comes back out on Sharp --

25 A It comes back out --

1 Q That's what I was talking about, the horseshoe kind of
2 thing.

3 A Yes, yes.

4 Q But what happens if you just take this road straight and
5 you don't take a left on Red Hill Road?

6 A You come to private property. It's kind of like a dead
7 end. It has, like, a gate.

8 Q And you went down there; right?

9 A Correct.

10 Q Okay. What's that I was getting at.

11 What did you see when you went down there?

12 A Well, I came to the intersection of Red Hill and
13 Whispering Pines and I saw brake lights down -- or a vehicle
14 had on brake lights or running lights down the hill that kind
15 of goes through the -- the end of that picture, the road -- or
16 the end of the road in that picture, there's a hill that
17 slopes down, and I could see brake lights down there -- or
18 brake lights or running lights. I called for a couple other
19 units, and we went down there --

20 Q Okay.

21 A -- and found the vehicle.

22 Q Take a look at 15, 16, and 17.

23 A Mm-hmm. Yes, sir.

24 Q Do you recognize that?

25 A I do.

1 Q And did you observe that that night?

2 A I did.

3 Q Okay. Where did you observe that?

4 A I don't know if I would call it the dead end of
5 Whispering Pines, but at the end of Whispering Pines Road
6 coming off of Sharpe Road.

7 Q Okay. If you go down -- if you keep going down to
8 Whispering Pines --

9 A Correct.

10 Q -- you said you could take a left on another dirt road
11 that's Red Hill?

12 A Red Hill Road, yes, sir.

13 Q And if you keep going straight, you said there's some
14 private property?

15 A I believe so. I believe that's where this gate is in
16 this picture.

17 Q So there's a gate right there?

18 A Yeah, some type of fence, gate. I guess you'd call it
19 like a wire gate going across the road.

20 Q And just beyond that fence is where you saw this car
21 you're talking about?

22 A Correct.

23 MR. SCOTT: Your Honor, the State offers 15, 16, and 17
24 for admission into evidence.

25 THE COURT: Any objection?

1 (No response.)

2 THE COURT: 15, 16, and 17 will be entered without
3 objection.

4 (State's Exhibit No. 15, 16, and 17, Photos of Vehicle on
5 Whispering Pines Road, was marked for identification and
6 received into evidence.)

7 BY MR. SCOTT:

8 Q Okay. Let me show you 15 first. So this is kind of a
9 gate you were talking about?

10 A Yes, sir.

11 Q And then what's this?

12 A It's the vehicle.

13 Q That's the vehicle you saw?

14 A Yes, sir.

15 Q Was there anybody in the vehicle?

16 A No.

17 Q Okay. Describe the vehicle.

18 A It was a silver 2017 Kia Forte with South Carolina
19 license plate PNZ-422.

20 Q Okay. Did it look like the average car you would see
21 parked outside of this courthouse here today? Or tell me some
22 more observations you remember.

23 A I wrote them down, so let me review real quick. I
24 remember it looked like it had gone through the gate or wire
25 or whatever you want to call going across it. So the air bags

1 had been deployed. The engine was still running. The
2 windshield wipers were still moving. It, obviously, had
3 damage to it.

4 Q Okay. I think you've got State's 17 up there with you.
5 Is that kind of what you observed?

6 A Yes, sir.

7 Q The windows were broken out?

8 A Mm-hmm.

9 Q Do you remember -- did you look inside or did you save
10 that for another --

11 A I believe -- I know I didn't open it. I may have peered
12 through just to see if there was anybody in there. I don't
13 remember something sticking out. But, no, I would have left
14 that for Crime Scene.

15 Q Okay. Did you run any of the information on the car or
16 was that somebody else?

17 A No, I ran the car.

18 Q Okay. And who did it come back registered to?

19 A To a Calandra T. Myers Edmunds.

20 Q Okay. Calandra Edmunds.

21 And did you ever know her relation to anybody involved in
22 this?

23 A No, I do not.

24 Q All right. But you were the first one to kind of find
25 the car, and you alerted other detectives to the presence of

1 that particular car?

2 **A** I saw the running lights or the brake lights and
3 requested another unit or two. I think Master Deputy Waddell
4 and Deputy Boss came with me.

5 **Q** Could you give any testament to about how far from
6 [REDACTED] Whispering Pines this car came to rest?

7 **A** Maybe three or four hundred yards would be my guess.

8 **Q** Okay. And you wouldn't have been able to see that car
9 from Whispering Pines?

10 **A** No. It's over a hill.

11 **Q** And no lights back there, were there?

12 **A** No, sir. There's no structures -- at that time, there
13 were no structures, that I remember.

14 **Q** Okay. All right. I think that's all the questions I
15 have for you. Appreciate it.

16 **A** Yes, sir.

17 THE COURT: Any cross-examination?

18 (No response.)

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

20 Any objection to this witness being excused?

21 MR. SCOTT: No, Your Honor.

22 THE WITNESS: Thank you.

23 MR. SCOTT: Can we approach, for scheduling purposes?

24 BENCH CONFERENCE

25 (A bench conference was held off the record and outside

1 of the hearing of the jury.)

2 THE COURT: Call your next witness.

3 MR. SCOTT: I would call Sylvester Brown.

4 SYLVESTER BROWN,

5 after having been duly sworn, was examined and testified
6 to as follows:

7 THE CLERK: Thank you. Please have a seat in the witness
8 stand, and state your full name for the record.

9 THE WITNESS: My name is Sylvester R. Brown.

10 DIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q Okay. Mr. Brown, how are you related to Micah Brown?

13 A He's my son.

14 Q November 7th of 2018, where were you living?

15 A On Sharpe Road.

16 Q Okay. ■ Sharpe Road?

17 A Yes, sir. Lot ■.

18 Q Lot ■?

19 And are you familiar with Whispering Pines Road?

20 A Yes, sir.

21 Q About how far away from your house is that?

22 A I would guess about a mile or so.

23 Q About a mile?

24 And we have some of these pictures, but when you turn on
25 to Whispering Pines Road, what is directly on the right?

- 1 **A** A little park.
- 2 **Q** A little park, playground kind of a thing?
- 3 **A** (No audible response.)
- 4 **Q** Okay. Do you remember the night of November 7th, 2018?
- 5 **A** Yes, sir.
- 6 **Q** Who lived at the house at Lot ■ off Sharpe Road?
- 7 **A** Me and my son.
- 8 **Q** Okay. Anybody else?
- 9 **A** No, sir.
- 10 **Q** All right. Do you remember what you were doing that
11 night?
- 12 **A** Well, I got home from work. You know, I kept calling him
13 to see if he wanted something to eat before I got home like I
14 always do.
- 15 **Q** To see if he wants something to eat?
- 16 **A** Yes, sir. Like I always do.
- 17 THE COURT: And, sir, can you -- can I have you either
18 pull the microphone closer to you or just pull your chair up,
19 yes, so we can hear you.
- 20 THE WITNESS: Do you want me to repeat it?
- 21 THE COURT: Yes. Thank you.
- 22 **A** I was trying to call home like I usually do to see if he
23 had wanted something to eat before I come home.
- 24
- 25

1 BY MR. SCOTT:

2 Q Okay. Do you remember whether he indicated he wanted
3 something to eat or not?

4 A I never did get in touch with him.

5 Q Okay. Who was at the house when you finally got there?

6 A It wasn't nobody there when I got there.

7 Q Do you remember at some point Micah coming in through the
8 front door?

9 A Well, him and his friend came in through the back door,
10 and I asked him why were they coming through the back door
11 because it's not supposed to be open.

12 Q Okay. So that was unusual for him to go through the back
13 door?

14 A Yes, sir.

15 Q And did you know that friend he was with?

16 A No, sir, not at all.

17 Q Describe him.

18 A Tall, light-skinned, lanky fellow.

19 Q Okay. I think you even estimated you thought he was
20 about seven foot tall?

21 A Yeah, he was tall.

22 Q And anything else you remember about him?

23 A Well, I noticed that night, he act like he had a panic
24 attack or something, so I gave him orange juice. I guess he
25 had diabetes or something.

1 Q Okay. Tell me what you noticed about them when they
2 first came into the house.

3 A I mean, when they first came in, I asked Mike, you know,
4 how come he didn't answer the phone when I called. And then I
5 asked him how come he was outside in the rain with a thin
6 jacket on while it was raining. So he told me that he lost
7 his phone, and he needed my phone to go find his phone, so I
8 gave him my phone.

9 Q Okay. So what did he say when you asked him if you could
10 go take him down the road to get his phone?

11 A He told me no, he said he'll go get it.

12 Q He said what?

13 A He said, no, they was going to get it.

14 Q He said he didn't want you to give him a ride to get his
15 phone?

16 A Yes, sir.

17 Q Was that noteworthy to you since it was -- well, what was
18 the weather like outside? You said he came in --

19 A It was raining.

20 Q Did he say where he left his phone?

21 A He said at the top of the road.

22 Q Okay. And is it noteworthy to you that, instead of
23 getting a ride with you, he wanted to go walk through the
24 rain?

25 A Well, I mean, the top of the road is just right up the

1 hill, so I figured it wasn't that far.

2 Q Okay. About how long was he gone when he left to go get
3 his phone?

4 A He was gone a little while. I couldn't tell you the
5 exact time.

6 Q Okay. But it wouldn't really take that long to get from
7 the top of the road from your Lot ■■■, would it?

8 A No, just a couple of minutes.

9 Q Okay. Do you remember, as you sit here today, what he
10 was wearing when he left -- when he first got to the house
11 when you were there?

12 A First got -- when he first got home, he had a yellow and
13 green thin jacket. And then he changed over to another jacket
14 with a hoodie on it. A thicker jacket.

15 Q Okay. Do you remember what color that one was?

16 A Kind of like a brown and grayish color.

17 Q Let me show you something. This might refresh your
18 memory. Do you remember this?

19 A Yes, sir.

20 Q At some point, law enforcement came and they were asking
21 you some questions.

22 A Yes, sir.

23 Q And you gave a statement at some point?

24 Let me see it real quick. Specifically what I'm talking
25 about is right here. Just read it to yourself, and I'll ask

1 you a follow-up question.

2 A (Witness complies.) Yes, sir.

3 Q Okay. So when you first saw him before he left to go
4 looking for his phone, what was he wearing?

5 A When he came in the house the first time, I saw he had on
6 green pants -- no, green jacket and some pants.

7 Q A green jacket?

8 A Yes, sir.

9 Q And then, whenever he left to go back to look for the
10 phone, what was he wearing?

11 A A black and gray hoodie jacket, thick like the other
12 jacket.

13 Q This is State's 35. Do you recognize that?

14 A Yes, sir.

15 Q Is that what he was wearing?

16 A Yes, sir.

17 MR. SCOTT: Your Honor, the State offers State's 35 for
18 admission into evidence.

19 THE COURT: Any objection?

20 (No response.)

21 THE COURT: It will be entered without objection.

22 (State's Exhibit No. 35, Photo of Jacket, was marked for
23 identification and received into evidence.)

24 BY MR. SCOTT:

25 Q Okay. So, when he first comes in the house and he's wet,

1 you're saying he's wearing a green jacket?

2 A Yes, sir.

3 Q And what -- do you remember the pants?

4 A No, sir.

5 Q Okay. And then he tells you he left his phone somewhere,
6 and you say, "Well, let me give you a ride," and he says no.

7 A Yes, sir.

8 Q And he left again?

9 A Yeah, he took my phone with him to find his phone.

10 Q And then he was wearing the black jacket and the gray
11 hoodie?

12 A Yes, sir.

13 Q Okay. When he went to go look for his phone -- when he
14 left the house to look for his phone, did the other fellow go
15 with him, the tall guy?

16 A Yes, sir.

17 Q And you said they were gone for a little while?

18 A Yes, sir.

19 Q Would you say they were gone about 40 minutes before they
20 came back?

21 A They was gone a while.

22 Q Okay. And did he have his phone when he came back?

23 A Yes, sir.

24 Q Okay. Did he go anywhere else that night?

25 A Well, they left to take the boy home -- his friend home.

1 He had called somebody to pick him up to take him home.

2 Q The tall guy?

3 A Yes, sir.

4 Q Did Micah leave again that night?

5 A Yes, sir. They left together.

6 Q Okay. Do you remember -- the next day, do you remember
7 any kind of behavior that Micah was exhibiting?

8 A No, sir.

9 Q Let me show you this statement. Specifically I'm talking
10 about that question and answer.

11 A Oh, yeah, I remember that.

12 Q Okay. What was he doing the next couple of days after
13 this night where he goes looking for the phone?

14 A Pacing around the house and stuff, you know, and just
15 looking -- if there was a car or something ride through, he'd
16 look and sit back down.

17 Q He was pacing -- I'm sorry; I'm having a little bit of
18 difficulty hearing, but you said he was pacing around?

19 A Yes, sir. Walking around the house. And every time a
20 car or something would ride by, he would look out the window
21 and sit back down.

22 Q Okay. And was that unusual to you?

23 A Yeah. I asked him was something wrong, and he said no.

24 Q I think that's all the questions I had. That's what you
25 remember from that particular night?

1 **A** Yes, sir.

2 **Q** All right. Thank you, Mr. Brown.

3 **A** Yes, sir.

4 **Q** I appreciate it.

5 MR. SCOTT: That's all the questions I have, Your Honor.

6 THE COURT: All right. Thank you.

7 Any cross-examination?

8 (No response.)

9 MR. SCOTT: Well, I do have one more question, Your
10 Honor, if I may.

11 THE COURT: Yes, sir.

12 BY MR. SCOTT:

13 **Q** Do you see Mr. Brown here today?

14 **A** Yes, sir.

15 **Q** All right. Where is he? Sitting there with his mask on?

16 **A** Yes, sir.

17 **Q** All right. Thank you.

18 THE COURT: All right. Any cross-examination?

19 (No response.)

20 THE COURT: All right. Thank you. You may step down,
21 sir.

22 Any objection to this witness being excused?

23 MR. SCOTT: None from the State.

24 THE COURT: Sir, you're free to leave.

25 Call your next witness.

1 MR. SCOTT: Your Honor, if possible, just for a clear
2 presentation -- I hate to break early; we moved really quickly
3 today. I can be done tomorrow with all my witnesses. I hate
4 to quit at 4:17, but I -- we have moved significantly quicker
5 than I expected. I could perhaps call some out of order that
6 might not make sense to what we have heard so far.

7 THE COURT: All right. Okay. Well, I guess we'll stop
8 for the day. Ladies and gentlemen of the jury, we will go
9 ahead and take our evening break. Please remember, do not
10 discuss anything regarding the case. Please do not discuss it
11 with anyone -- your fellow jurors. It is also improper for
12 you to form any opinion at this point in time -- any opinion
13 at this point in time.

14 Remember: Do not do any independent research regarding
15 any issue in this case, and we'll see you in the morning at
16 9:30. I'm aware that tomorrow is Election Day, and so, we'll
17 start at 9:30, for those of you who can -- if you need to go
18 vote in the morning, that will give you a little bit of time
19 to do that, and then I will probably -- we'll probably stop
20 tomorrow afternoon around -- maybe around the same -- this
21 time or maybe a little bit later so you'll have an
22 opportunity, for those of you who don't -- can't go vote in
23 the morning, you'll have an opportunity to go vote tomorrow
24 afternoon.

25 And I believe that's it. I -- remember to keep on those

1 IDs, and we will see you back in the morning at 9:30. Have a
2 wonderful evening.

3 (The jury exited the courtroom at 4:19 p.m.)

4 THE COURT: All right. So, tomorrow, we'll start right
5 at 9:30.

6 MR. SCOTT: We'll be ready to go tomorrow.

7 THE COURT: And please have all your witnesses lined up.
8 We'll probably stop and take a lunch break, and then I'll go
9 into maybe -- you know, depending on where we are, until 4:30,
10 no later than 5:00 tomorrow to give everyone an opportunity to
11 go vote.

12 MR. SUTHERLAND: I think what threw the scheduling off is
13 they were missing about a 45-minute opening from me, so that
14 would have put us right --

15 MR. SCOTT: I think we'll rest tomorrow, Your Honor. I
16 mean, knock on wood, it's not going to be much longer.

17 THE COURT: All right. And so go ahead and if you have
18 any proposed jury charges, send those to my law clerk, and if
19 you can discuss jury charges with Mr. Brown.

20 MR. SUTHERLAND: Yes, ma'am.

21 THE COURT: All right. Thank you. We'll see everyone at
22 9:30 in the morning.

23 MR. SCOTT: Thank you, Your Honor.

24 (At 4:20 p.m., the trial was adjourned until November 8,
25 2022, at 9:30 a.m.)

1 NOVEMBER 8, 2022, at 10:30 a.m.

2 THE COURT: All right. Just before we get started -- I
3 hope everyone had a good evening before we get started.
4 Before we get started, this is an open courtroom and people
5 can come and go, but let's try not to -- because there was a
6 lot of noise in the background yesterday, people coming in and
7 out, coming in and out, and the jurors, I'm not sure if they
8 were completely able to hear everything, and I know it was
9 difficult for me at some times.

10 So, let's try not to go out. If you're going to go out,
11 go out in between witnesses. When the Court is instructing
12 the jury, you're not supposed to go out of the courtroom. So
13 just keep that in mind, but I know there was a lot of in and
14 out yesterday, and we have to get an accurate record of
15 everything that has been said in the case.

16 All right. Anything we need to take up this morning
17 before we bring the jury in? Mr. Scott?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: Mr. Brown? Anything you need to put on the
20 record?

21 MR. SUTHERLAND: No, ma'am.

22 THE COURT: All right. He's good? Okay?

23 MR. SUTHERLAND: Yes, ma'am.

24 THE COURT: All right. Let's bring them on in.

25 (The jury entered the courtroom at 10:32 a.m.)

1 THE COURT: Good morning, ladies and gentlemen of the
2 jury. I hope you had a restful evening. At this time, we are
3 ready to continue with the State's case. I will ask the State
4 to call their next witness. Thank you.

5 MR. FOWLER: Thank, Your Honor. May it please the Court?
6 The State calls Michelle Seay.

7 MICHELLE SEAY,
8 after having been duly sworn, was examined and testified
9 to as follows:

10 THE CLERK: Thank you. Please have a seat at the stand
11 and state your name for the record.

12 THE WITNESS: Michelle Seay. Seay is spelled S-e-a-y.

13 DIRECT EXAMINATION

14 BY MR. FOWLER:

15 Q Ms. Seay, what is your occupation?

16 A I am a crime scene investigator and latent print
17 examiner.

18 Q How long have you been doing that?

19 A I have been in crime scene since 2018.

20 Q And so, speaking of 2018, did you respond to a Whispering
21 Pines Road on November 7th, 2018?

22 A Yes.

23 Q What did you do when you got to Whispering Pines Road?

24 A When I arrived at Whispering Pines Road, I initially made
25 contact with the deputies here on-scene. I was notified that

1 two of the victims had already been transported to the
2 hospital and that one victim remained on-scene. I documented
3 the scene as it was when I arrived through photographs and
4 notes and collected evidence that was left on the scene.

5 Q Speaking of evidence collected, what did you collect?

6 A May I refer to my notes.

7 Q Yeah.

8 A In total, on the 7th, when I collected evidence, I
9 collected a firearm grip, a black jacket, a white shirt with
10 reddish-brown stains, brown overalls with reddish-brown
11 stains, a gray and black jacket, a pair -- a gray blanket,
12 broken glass, and four swabs from reddish-brown stains.

13 Q Okay. I think the first thing you said was a pistol
14 grip. I'm going to show you what's been admitted into
15 evidence of State's 13. Is that the pistol grip that you
16 collected?

17 A It is.

18 Q That's a photograph of it?

19 A Yes, sir.

20 (State's Exhibit No. 70, Gun Grip, was marked for
21 identification.)

22 BY MR. FOWLER:

23 Q Now, I'm going to show you what has been premarked as
24 State's 70. Can you tell me what this is?

25 A This is the envelope containing the gun grip that I

1 collected and I packaged.

2 Q And does that envelope bear your signature?

3 A It does.

4 Q Indicating what?

5 A That I sealed it. And it also has my initials on the
6 tape saying that I submitted the evidence and I packaged it
7 and sealed it.

8 Q And that's where you collect it from, is the scene?

9 A Yes, sir.

10 Q Investigator Seay, I'm going to ask you to please open
11 that package.

12 A (Witness complies.) And take it out?

13 Q Yes, please, if you would. And show it to the jury.

14 Is that the pistol grip you collected from Whispering
15 Pines Road?

16 A Yes.

17 Q And I noticed on the envelope there was a biohazard
18 stamp. Why was that on there?

19 A Because, at the time of the collection, there was blood
20 or reddish-brown substance on it.

21 Q Which you believed to be blood?

22 A Yes. So I placed a biohazard sticker on it for anyone
23 who would be handling it after I submitted it.

24 MR. FOWLER: Your Honor, at this time, I would move
25 State's 70 into evidence.

1 THE COURT: Any objection?

2 (No response.)

3 THE COURT: All right. It will be entered without
4 objection.

5 (State's Exhibit No. 70 was received into evidence.)

6 MR. FOWLER: I have no further questions for this
7 witness, Your Honor.

8 THE WITNESS: Do you want me to place this back in?

9 MR. FOWLER: Yeah, if you could.

10 THE COURT: Any cross-examination?

11 (No response.)

12 THE COURT: All right. Thank you, ma'am. You may step
13 down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Any objection to this witness being excused?

16 MR. FOWLER: Not from the State.

17 THE COURT: All right. You're free to leave, ma'am.

18 All right. Call your next witness.

19 MR. FOWLER: The State calls Lieutenant Harold Bouknight.

20 LIEUTENANT HAROLD BOUKNIGHT,

21 after having been duly sworn, was examined and testified
22 to as follows:

23 THE CLERK: Thank you. Please have a seat in the witness
24 stand. State your full name for the record, and please spell
25 your last name.

1 THE WITNESS: Lieutenant Harold Michael Bouknight.
2 B-o-u-k-n-i-g-h-t.

3 DIRECT EXAMINATION

4 BY MR. FOWLER:

5 Q Lieutenant, could you please tell the jury what you do?

6 A I'm the lieutenant over Crime Scene and Latent Prints of
7 Richland County Sheriff's Department. I've been employed at
8 the sheriff's department since 2002 and been in Crime Scene
9 since 2005.

10 Q Lieutenant Bouknight, in November of 2018, did you
11 respond to Whispering Pines Road?

12 A Yes, I did.

13 Q How did you come to respond to that scene?

14 A When we have a crime scene that happens during the night,
15 a lot of times, we'll go back the next day to just do a
16 follow-up search, look for any more evidence, and have a case
17 investigator come out there with us and walk the scene to see
18 if there's anything else we need to do, any questions they
19 have that we can answer while we're out there before we
20 release the scene.

21 Q So, this would have been the day following the incident?

22 A Yes, sir. It was the next morning.

23 Q So, November the 8th?

24 A Yes, sir.

25 Q And you said you go out there to see if there's any

1 evidence that you missed while it was dark out. Did you find
2 anything in the daylight?

3 **A** Yes, sir, I did. In a park next door to the location,
4 across the street of Whispering Pines, there was a slide and
5 part of a frame to a handgun, an H&K model.

6 (State's Exhibit Nos. 10, 11, 12, and 14, Photos of
7 Pistol Slide, were marked for identification.)

8 BY MR. FOWLER:

9 **Q** Lieutenant Bouknight, I'm going to show you what's been
10 marked as State's 10, 11, 12, and 14. Can you tell me what
11 these are?

12 **A** These are photographs of the slide -- of the park and the
13 slide and broken part of frame and the broken part of the
14 frame with what -- showing the serial number and what appeared
15 to be hair caught in the broken part of the frame.

16 **Q** And that's the slide that you found at the scene?

17 **A** Yes, sir.

18 **Q** And that's a fair and accurate representation of it?

19 **A** Yes, sure, it is.

20 MR. FOWLER: Your Honor, at this time, I would move
21 State's 10, 11, 12, and 14 into evidence.

22 THE COURT: Any objection?

23 (No response.)

24 THE COURT: All right. They'll be entered without
25 objection.

1 (State's Exhibit Nos. 10, 11, 12, and 14 were received
2 into evidence.)

3 MR. FOWLER: May I publish, Your Honor?

4 THE COURT: Yes.

5 BY MR. FOWLER:

6 Q And, for the record, this is State's 14. Could you
7 explain to the jury again what this is?

8 A That is the bottom part of the frame towards the muzzle
9 end, and that's the serial number plate on there. And then
10 right in front of that, you can see that's what appears to be
11 hairs.

12 Q Did that appear to be hair to you?

13 A Yes, sir.

14 Q Did you -- can you read that serial number from there?

15 A 224-175505.

16 Q I believe that might be a six.

17 A Sure. Sorry. I can't tell from here.

18 Oh, yeah. 175506.

19 Q I want to show you State's 10. What is that?

20 A That's the overall photo of the park and the frame there
21 approximately in the middle.

22 Q Okay. So that's where you found it?

23 A Yes, sir.

24 Q All right. I'm going to show you State's 65, which is an
25 aerial shot of the crime scene. Do you mind --

1 MR. FOWLER: Your Honor, may the witness step down?

2 THE COURT: Yes.

3 BY MR. FOWLER:

4 Q Would you mind coming and showing us just kind of
5 generally where you found that slide?

6 A If this is Whispering Pines, it was in this area here.

7 (State's Exhibit No. 69, Parts of Pistol, was marked for
8 identification.)

9 BY MR. FOWLER:

10 Q All right. I'm going to show you what's been marked as
11 State's 69. What is that?

12 A This is where I packaged the slide and broken part of a
13 frame, and there was an unfired cartridge in it that was
14 jammed in the ejection port of the slide.

15 Q Does that box have your name on it?

16 A Yes, it does.

17 Q And what does that indicate?

18 A That I collected and submitted it to Evidence and
19 Property.

20 Q Would you mind opening that box for us, Lieutenant?

21 A Sure.

22 Q Can you show the jury what you've got in there?

23 A That would be the broken part of the frame. And then
24 this is the slide. And there's some more smaller broken
25 pieces in here.

1 Q How would you describe the condition of that slide when
2 you found it?

3 A It was -- whenever I found it, it was -- like I say, it
4 had an unfired cartridge stuck in the ejection port.

5 Q Can you tell us a little bit about that?

6 A Well, here's your ejection port. And it was not fully --
7 the slide wasn't fully forward because there was an unfired
8 cartridge that was jammed in there.

9 Q And when you typically see a pistol, is there a handle
10 attached to it?

11 A Typically, yes.

12 Q But there wasn't on this one?

13 A No, sir.

14 Q And that is the slide that you recovered from Whispering
15 Pines Road; correct?

16 A Yes, sir.

17 MR. FOWLER: Your Honor, at this time, I would move
18 State's 69 into evidence.

19 THE COURT: Any objection?

20 (No response.)

21 THE COURT: It will be entered without objection.

22 (State's Exhibit No. 69 was received into evidence.)

23 MR. FOWLER: Your Honor, I have no further questions for
24 this witness.

25 THE COURT: All right. Any cross-examination?

1 (No response.)

2 THE COURT: All right. Thank you, sir. You may step
3 down.

4 Any objection to this witness being excused?

5 (No response.)

6 THE COURT: Sir, you're free to leave.

7 Call your next witness.

8 MR. FOWLER: The State calls CSI Sara Holt.

9 SERGEANT SARA HOLT,

10 after having been duly sworn, was examined and testified
11 to as follows:

12 THE CLERK: Please have a seat in the witness stand, and
13 state your full name for the record.

14 THE WITNESS: Sergeant Sara Holt, formerly Sara
15 Humphries.

16 DIRECT EXAMINATION

17 BY MR. FOWLER:

18 Q Sergeant Holt, what do you do?

19 A I'm a crime scene investigator for the Richland County
20 Sheriff's Department. I've been at the sheriff's department
21 for about 12 years now, and I've been in crime scene for six
22 years.

23 Q What can you tell us about your involvement in this
24 incident?

25 A I processed a vehicle.

1 Q Do you know where that vehicle was found?

2 A I do not.

3 Q Would it help if I showed you your report?

4 A So that's the incident location. [REDACTED] Whispering Pines
5 Road.

6 Q And when you say you processed the car, what does that
7 mean?

8 A So, I was requested by the investigator to process for
9 certain things, such as latent -- or fingerprints, DNA, any
10 evidence of firearms, any evidence of a shooting.

11 Q I'm sorry; I forgot to ask. What kind of car was it?

12 A It was a Kia Forte.

13 Q What color?

14 A I believe it was silver.

15 (State's Exhibit Nos. 21 through 33, Photos of Kia Forte,
16 were marked for identification.)

17 BY MR. FOWLER:

18 Q I'm going to show you what's been marked as State's 21
19 through 33. Can you tell us what we're looking at in those
20 pictures?

21 A So, this is the Kia Forte, and these are pictures of
22 possible impact points, fired cartridge casings, reddish-brown
23 stains.

24 Q Did you take those photos?

25 A I did.

1 Q So, that's a fair and accurate representation of the car
2 you processed?

3 A It is.

4 MR. FOWLER: Your Honor, at this time, I would move to
5 put State's -- hold on; I can't remember the numbers -- 21
6 through 33 into evidence.

7 THE COURT: Any objection?

8 (No response.)

9 THE COURT: All right. They'll be entered without
10 objection.

11 (State's Exhibit Nos. 21 through 33 was received into
12 evidence.)

13 BY MR. FOWLER:

14 Q All right, Sergeant. I'm going to just kind of go
15 through these pictures I just showed you and have you explain
16 to the jury what we're seeing.

17 A So, this is a picture of the front passenger's door, the
18 inside where I have marked two possible impact points.

19 Q And what do you mean by "two possible impact points"?

20 A So, the two possible impact points would be where a
21 bullet went through the door panel possibly.

22 So, this is the driver's seat. There is a fired
23 cartridge casing marked on the driver's seat, which, as you
24 see, is J. And then the other two markers, S-4 and S-3, are
25 reddish-brown stains that I observed.

1 Q Are those reddish-brown stains consistent with blood?

2 A They are.

3 So, this is the back seat of the Kia Forte, and here is
4 where I marked reddish-brown stains on the back seat, S-7 and
5 S-6.

6 So, these are possible impact points that went through
7 the front passenger seat.

8 Q I'm sorry? What seat? You said what?

9 A The front passenger seat.

10 So, these are fired cartridge casings. I believe I can
11 tell you where they were at. So, it's between the front
12 passenger seat and the door is where those were located.

13 So "I" is another fired cartridge casing, and it was
14 located in the center console area, and "G" is what I have as
15 marked the Styrofoam cup right there.

16 "K" is going to be another fired cartridge casing on the
17 rear driver's side floorboard.

18 This is just showing those possible impact points on the
19 front passenger seat with trajectory rods, and we use those to
20 kind of show the direction of the possible bullet.

21 Q So, what direction would these trajectory rods be
22 showing?

23 A So, that's showing that they're coming from the back
24 passenger area to the front seat.

25 Q Sort of indicating that they're coming from the driver's

1 side of the vehicle?

2 **A** Correct.

3 **Q** But from the back.

4 **A** Yeah. The back driver's side area. That's just another
5 picture of it.

6 "O" is another fired cartridge casing that I found in the
7 center console area. That's a closer picture of it.

8 So, I believe -- let me double-check. I believe all of
9 these are going to be fired cartridge casings that I found.

10 **Q** Can you tell us where those are?

11 **A** Yes. Those are going to be on the rear driver's side
12 floorboard area. So it would be behind the driver's seat.

13 **Q** In the back seat?

14 **A** Correct.

15 **Q** And then the last one?

16 **A** That's just a closer picture of it.

17 **Q** So these fired cartridge casings, what did you do with
18 them after you photographed them?

19 **A** So, when I collect them, I will take them into our lab
20 and process them for fingerprints and DNA, and then once
21 that's completed, I will package them and submit them to
22 evidence and property.

23 (State's Exhibit No. 71, Cartridge Casings, was marked
24 for identification.)

25 BY MR. FOWLER:

1 Q I'm going to ask -- I'm going to show you what's been
2 marked as State's 71 and ask you if you'd please open that.

3 A (Witness complies.)

4 Q Would you mind holding them up? Oh, I guess they're all
5 individual.

6 A Yeah, they're all individually packaged.

7 Q Can you just show us one of the ones that you found?

8 A (Indicating.)

9 Q Okay. And that one and the rest of them were all
10 collected by you from this car?

11 A They were, yes.

12 Q How many total did you collect?

13 A There were a total of nine fired cartridge casings that I
14 collected.

15 MR. FOWLER: Your Honor, at this time, I would move
16 State's 71 into evidence.

17 THE COURT: Any objection?

18 (No response.)

19 THE COURT: They'll be entered without objection.

20 (State's Exhibit No. 71 was received into evidence.)

21 BY MR. FOWLER:

22 Q And just to recap, you found shell casings in the
23 backseat on the driver's side, beside the passenger seat door,
24 in the center console -- you found them all over the car?

25 A They were pretty much throughout the vehicle, yes.

1 Q And then those trajectory rods, you said -- what was the
2 direction you said they were coming from?

3 A From the back driver's seat area to the front.

4 Q I guess maybe -- this is kind of a diagram I did of the
5 seating arrangement of the car, but let's say that this is the
6 back driver's side.

7 A Okay.

8 Q So, what would be the trajectory of the bullets based on
9 what you saw?

10 A So, it would kind of be going this way (indicating).

11 MR. FOWLER: Your Honor, I have no further questions for
12 this witness.

13 THE COURT: Any cross-examination?

14 (No response.)

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

16 Any objection to this witness being excused?

17 (No response.)

18 THE COURT: All right. You're free to leave.

19 Call your next witness.

20 MR. FOWLER: The State calls Robert Oates.

21 ROBERT OATES,

22 after having been duly sworn, was examined and testified
23 to as follows:

24 THE CLERK: Thank you. Please have a seat in the witness
25 stand and state your name for the record.

1 THE WITNESS: Thank you. Robert Oates. O-a-t-e-s.

2 DIRECT EXAMINATION

3 BY MR. FOWLER:

4 Q Deputy Oates, what do you do?

5 A Say again, sir?

6 Q What do you do?

7 A I am uniformed division with Region 5, Courthouse or
8 Judicial Services.

9 Q What did you do before that?

10 A I was a crime scene investigator for 17 years.

11 Q Are you familiar with the incident that we're here for
12 today?

13 A Yes.

14 Q What was your involvement in that incident?

15 A I -- my involvement, basically, is that I was summonsed
16 by -- I was on call, and I was summonsed by a criminal
17 investigator -- Investigator Faust -- to meet him at a
18 residence to help -- help with a search warrant -- executing a
19 search warrant. Trying to find the right word.

20 Q Where were you executing that search warrant?

21 A ■ Sharpe Road. And that was Lot No. ■.

22 Q You said Sharpe Road?

23 A Sharpe Road, yes, mm-hmm.

24 Q And what did you do when you got to ■ Sharpe Road?

25 A I basically viewed the SW, or search warrant, to make

1 sure it was valid on its face, what I was looking for, to make
2 sure everything was correct. And then, basically, then
3 assessment. I walked through the actual -- I believe it was a
4 trailer. I walked through with investigators -- criminal
5 investigators, and -- looking for evidence and, basically,
6 pinpoint the evidence that was I going to collect. I then
7 photographed that evidence without a marker. I then used a
8 marker a second time with the photograph and then collected
9 it, collected the items.

10 **Q** Tell us about what evidence you collected.

11 **A** I collected a black LG cell phone and a white LG cell
12 phone, and these were in the living room. The black LG cell
13 phone was on the living room couch, and the white LG cell
14 phone was on the living room floor beside the couch.

15 The next thing that I observed, photographed, and
16 collected was two pairs of black shoes, and that was in a rear
17 bedroom floor -- on a rear bedroom floor; a black jacket with
18 a gray hoodie, and that was on a rear bedroom floor beside the
19 bed; a tan pair of jeans with a black belt that was also on
20 the rear bedroom floor beside the bed; a blue Polo T-shirt was
21 on the rear bedroom floor beside the bed. So, basically they
22 were all together.

23 And during my search of that bedroom, I did collect five
24 RNP brand .38 Special fired cartridge casings. They were
25 fired. Okay? And that was in the rear bedroom inside of a TV

1 cabinet, top drawer.

2 And then I did observe one RNP brand .38 Special fired
3 cartridge casing -- another fire cartridge casing. And this
4 one was on the rear bedroom dresser top, in that same rear
5 bedroom.

6 (State's Exhibit No. 75, Cell Phones, were marked for
7 identification.)

8 BY MR. FOWLER:

9 Q I'm going to show you what's been marked as State's 75.
10 I don't know if you can -- if you can identify it from this
11 bag. So, you need to open it, please feel free.

12 A Okay. Those are two cell phones: black and white LG
13 cell phones. That is my seal and my signature, yes, sir.

14 Q And so those are the phones you collected --

15 A Yes.

16 Q -- from [REDACTED] -- what was it?

17 A [REDACTED] Sharpe Road, Lot [REDACTED], yes.

18 MR. FOWLER: Your Honor, at this time, I would move
19 State's 75 into evidence.

20 THE COURT: Any objection?

21 (No response.)

22 THE COURT: All right. It will be entered without
23 objection.

24 (State's Exhibit No. 75 was received into evidence.)

25 BY MR. FOWLER:

1 Q Okay, Deputy Oates. I think you said you collected some
2 clothing; is that correct?

3 A Yes, I did.

4 Q Would you mind opening that and telling me if that is the
5 clothing you collected? I think there's a pair of scissors up
6 there.

7 (State's Exhibit No. 76, Clothing, was marked for
8 identification.)

9 MR. FOWLER: So, for the record, this is premarked as
10 State's 76.

11 THE COURT: All right. For ID?

12 MR. FOWLER: Yes, ma'am.

13 A Yes. That's what I packaged.

14 BY MR. FOWLER:

15 Q Could you -- I'm sorry. I know you put it all back, but
16 would you mind showing the jury?

17 A You want me to take it --

18 Q Yeah, if you don't mind.

19 A Okay. The first item is going to be a tan pair of jeans
20 with a black belt.

21 Q Can you unravel it for us?

22 A (Witness complies.)

23 Q And did you denote anything on those pants when you
24 collected them?

25 A At the time -- at the time, I did not. I just collected

1 them and placed them in a brown paper bag, transported them
2 back to the lab, and placed them in a drying cabinet because
3 they were -- they were damp. And so I wanted whatever was on
4 the pants, if anything, to be dry before I did any analysis.

5 **Q** And after they dried, did you notice anything on them?

6 **A** Yes, I did.

7 **Q** What did you notice?

8 **A** I noticed there were some stains on the jeans.

9 **Q** What color?

10 **A** I think it was reddish-brown stains, which is the term
11 that we use for possibly blood. Okay?

12 **Q** And I think you said -- I'm sorry to interrupt you. I
13 think you said they were also damp when you collected them.

14 **A** Yes, they were. They were damp, yeah. I put them in the
15 dry cabinet to dry the material.

16 **Q** Possibly from being in the rain?

17 **A** Right, possibly. Possibly. Or they were wet, yes,
18 mm-hmm.

19 **Q** Show us what else that you got in there, if you don't
20 mind.

21 **A** Sure. This is the blue Polo shirt that was selected and
22 also, it was wet, so it was placed in the drying cabinet,
23 along with the tan pants with the belt in order to dry before
24 analysis.

25 **Q** Bear with me one second. Let me get this glove on, and

1 then I'll help you out, showing this stuff.

2 Can you tell us what this last item in here is?

3 **A** This is going to be the black jacket with the gray
4 hoodie. Yeah, with the gray hoodie (indiscernible).

5 **Q** And did that gray hoodie also go into the drying rack?

6 **A** It did, yes.

7 **Q** And why did you put that in the drying rack?

8 **A** It was wet, along with the other gray or tan pants and
9 the belt and the blue Polo shirt.

10 **Q** And I'm going to show you what's been already admitted
11 into evidence as State's 35. Is that that same jacket there?

12 **A** It is, yes.

13 **Q** And you collected all of this from [REDACTED] Sharpe Road?

14 **A** Yes, I did, yes.

15 **Q** And packaged it into evidence.

16 **A** I did, yes.

17 MR. FOWLER: Your Honor, at this time, I would move to
18 put State's 76 into evidence.

19 THE COURT: Any objection?

20 (No response.)

21 THE COURT: All right. It will be entered without
22 objection.

23 (State's Exhibit No. 76 was received into evidence.)

24 MR. FOWLER: Your Honor, I have no more questions for
25 this witness.

1 THE COURT: All right. Any cross-examination?

2 (No response.)

3 THE COURT: All right, sir. You may step down.

4 Any objection to this witness being excused?

5 MR. FOWLER: No, Your Honor.

6 THE COURT: All right, sir. You're free to leave.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Let's call your next witness.

9 MR. SCOTT: The State calls Brian Metz, Your Honor.

10 BRIAN METZ,

11 after having been duly sworn, was examined and testified
12 to as follows:

13 THE CLERK: Thank you. Please have a seat in the witness
14 stand and state your full name for the record.

15 THE WITNESS: It's Brian Metz. B-r-i-a-n M-e-t-z.

16 DIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Okay. Mr. Metz, what do you do at the sheriff's
19 department?

20 A I'm an investigator in the Technical Services Unit of
21 Investigations.

22 Q All right. And as part of your duties, do you -- are you
23 able to perform, I guess, Cellebrite phone draws?

24 A Yes, I am.

25 Q And explain to the jury what that means.

1 **A** Cellebrite is a commercial software. It's used by both
2 phone companies and law enforcement, predominantly. Depending
3 on the ability to access the phone, it will determine what
4 level of extraction you can get off the phone. It's one that
5 we use pretty much daily at the sheriff's department.

6 **Q** And is that software that's updated periodically?

7 **A** It is.

8 **Q** So, maybe if you can't get Cellebrite to dump or download
9 the contents of a cell phone today, perhaps their software
10 will be upgraded next year and then you'll be able to perform
11 a complete extraction then?

12 **A** That's correct.

13 **Q** Okay. And State's 75 was introduced into evidence a
14 minute ago. Do you recognize what 75 is, specifically, I
15 guess, the black LG phone contained in 75?

16 **A** Yes, sir.

17 **Q** All right. And why is that -- why is that familiar to
18 you?

19 **A** I received that phone from Investigator Loftis in
20 November of 2018, where he asked me to see if I could extract
21 anything from the phone.

22 **Q** Okay. And were you able to extract anything from that
23 particular phone?

24 **A** At the time, it had a passcode that we were not able to
25 get past. I was able to get a very small extraction that did

1 not contain a lot of information.

2 Q Okay. But that cell phone remained in the sheriff's
3 department's care and custody since then?

4 A That was in my care and custody.

5 Q Okay. And were you, after software updates, able to
6 eventually perform a full extraction on the phone?

7 A I was. The updates allowed us to bypass that passcode.
8 And once that opened the phone completely, then we were able
9 to get a physical -- a file and a logical extraction from the
10 phone.

11 Q Do you know the phone number associated with that
12 particular -- the black LG phone that you performed the
13 extraction on?

14 A Yes, sir.

15 Q And what is that phone number?

16 A It's [REDACTED] -- let me look. [REDACTED] 6779.

17 Q All right. Specifically, you kind of knew the dates of
18 the incident in question; is that fair to say?

19 A Yes, sir.

20 Q Okay. And were you paying attention, I guess, to those
21 relevant days specifically, November 7th, 2018?

22 A That's correct.

23 Q Let me show you State's 72 and ask you if you recognize
24 that.

25 A I do.

1 Q What is that?

2 A This is a report from Cellebrite that shows instant
3 messages between that phone and another phone.

4 Q And so, it shows a conversation that somebody using that
5 phone you did a dump -- on that black LG -- it shows a
6 conversation that somebody using that phone had with somebody
7 else?

8 A That's correct.

9 Q Let me ask you this: When you do a Cellebrite
10 extraction, you talk about text messaging and Facebook chats
11 and whatnot? What if I delete a text message that I had sent?
12 Would that still show up in the Cellebrite extraction?

13 A So, there is a good possibility, especially if you get a
14 physical download, especially if it's timely. There are
15 several reasons why you would not: distance and time, other
16 things have been put on the phone, that type thing.

17 But with a physical download, you do often get a good
18 amount of deleted information using the Cellebrite system.

19 Q Okay. The conversation contained in State's 72 --

20 A Yes, sir.

21 Q -- was that deleted or --

22 A That's not deleted.

23 Q Okay. That was not deleted.

24 When does that particular exchange begin? What's the
25 date of that exchange again?

1 **A** It begins on 10/13 of 2018.

2 **Q** Okay. So, October -- you said 18th?

3 **A** 13th.

4 **Q** Okay. About a month before our incident then.

5 What is the gist of the conversation? What is the person
6 who's using the black LG phone that's been submitted into
7 evidence, what are they trying to do?

8 **A** They're attempting to trade a weapon for another weapon.

9 **Q** Okay. And is there conversation regarding that chat
10 that's closer in time to our incident date of November 7th?

11 **A** There are some on November 7th.

12 **Q** Okay. And the user of the phone, what are they
13 indicating on November 7th?

14 **A** It was to do with trading for a GLOCK and coming to, I
15 think, Augusta to make the trade.

16 **Q** Okay. At some point, does the user of the black LG
17 submit a photo of a gun they're trying to sell?

18 **A** They do.

19 (State's No. 67, Picture of Gun in Chat, was marked for
20 identification.)

21 BY MR. SCOTT:

22 **Q** And this is State's No. 67. Do you recognize this?

23 **A** I do.

24 **Q** What is that? Is that the picture that they submitted?

25 **A** So, that's a picture that was submitted in this chart on

1 11/7 of 2018.

2 Q Okay. That's the gun that the user of the black LG is
3 attempting to trade somebody?

4 A That's correct.

5 MR. SCOTT: Your Honor, the State offers 67 for admission
6 into evidence.

7 THE COURT: Any objection?

8 (No response.)

9 THE COURT: It will be entered without objection.

10 (State's Exhibit No. 67 was received into evidence.)

11 MR. SCOTT: Your Honor, we're going to publish 67 at this
12 point.

13 BY MR. SCOTT:

14 Q Okay. And, in that particular picture, are you able to
15 read the serial number of the person who is trying to sell or
16 trade and the serial number on that gun?

17 A It's a little difficult to read it on paper, but yes, I
18 was able to see the serial number.

19 Q Okay. But that was the picture that you were --

20 A That's right.

21 Q -- extracting from that phone?

22 Let me ask you this: The day after our incident date,
23 that would be November 8th, was there any conversation?

24 A There was. There was, on 11/8.

25 Q Okay. What does the user of the black LG -- what do they

1 indicate as far as their ability to trade guns the day after
2 our incident?

3 **A** If I read this right, he's indicating he no longer has
4 that gun.

5 **Q** What does it say exactly?

6 **A** So, the one individual is saying he's fixing to come and
7 "you've got the money all ready?" And then it's, "Facts. I
8 just got that 9 off, bro."

9 And then the next response to that is, "Well, what do you
10 got now?"

11 **Q** Okay. So, he no longer has the weapon on November 8th,
12 is what he indicates?

13 **A** That's correct.

14 (State's Exhibit No. 73, Chat Message, was marked for
15 identification.)

16 BY MR. SCOTT:

17 **Q** Investigator Metz, this is State's 73. Do you recognize
18 that chat as well?

19 **A** I do.

20 **Q** And that chat is between the user of that black LG phone
21 and -- who was he contacting on that chat?

22 **A** I'm not sure how you pronounce his name, but it's
23 Trigelino (ph) GZ, is the name used.

24 **Q** Okay. And what date -- or, rather, is he communicating
25 with Trigelino on the date in question, on November 7th of

1 2018?

2 **A** He is.

3 **Q** Phone calls or text messages or both?

4 **A** This is showing text messages or instant messages.

5 **Q** Are you able to see if there's phone calls received or
6 missed from either one of them?

7 **A** They should be. Yes.

8 **Q** So, the user of black LG and Trigelino are messaging each
9 other but also calling one another? Is that what you're
10 saying?

11 **A** That's correct.

12 MR. SCOTT: Thank you. Nothing further of this witness,
13 Your Honor.

14 Oh, wait a minute.

15 Thank you, Your Honor. That's all.

16 THE COURT: All right. Any cross-examination?

17 (No response.)

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

19 You may be excused, sir.

20 Call your next witness.

21 MR. SCOTT: Your Honor, the State calls Jason Roach.

22 JASON ROACH,

23 after having been duly sworn, was examined and testified
24 to as follows:

25 THE CLERK: Thank you. Please have a seat in the

1 witness stand and state your full name for the record.

2 THE WITNESS: My name is Jason Clark Roach. R-o-a-c-h.

3 DIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Okay. Deputy Roach, what are your duties with the
6 Sheriff's department?

7 A I'm primarily a firearms examiner in the Firearm and Tool
8 Mark Section of the Richland County Sheriff's Department
9 Forensic Sciences Lab.

10 Q Okay. Is there a way -- what does that mean? What does
11 that mean to a jury who may not be familiar with the sheriff's
12 department? What do you do on a day-to-day basis?

13 A My day-to-day basis is I do forensic analysis of firearms
14 evidence and its evaluation and function of firearms,
15 ammunition, and its components, which are bullets and
16 cartridge cases and the unique markings left on those bullets
17 and cartridge cases from firearms.

18 Q Okay. When a when a gun is fired, we all know what a
19 bullet is, but what kind of components do they break down once
20 the gun is fired? What does the bullet break down into?

21 A So, a cartridge -- we call it a single unit of ammunition
22 -- has four parts: the bullet; the cartridge case, which
23 holds the bullet; and the propellant; and on the back of the
24 cartridge case is the primer. When that primer struck, it
25 creates a spark. It starts burning the gunpowder. Gunpowder

1 builds up pressure and pushes the bullet in and out of the
2 barrel. Opposite pressure comes back, on a semiautomatic
3 firearm, which has an actuating slide, pushes that slide back,
4 which allows the empty cartridge case to be extracted and
5 ejected from that firearm, making way for a new cartridge in
6 the magazine to be loaded and starting the firing sequence
7 over again.

8 Q So, I guess, when you fire a semiautomatic pistol, the
9 casing is what is ejected out of the gun?

10 A Correct, yes, sir.

11 Q And we had a -- I don't know if you're in here. We had
12 an investigator talking about nine cartridge casings that were
13 found in an automobile?

14 A Yes, sir.

15 Q All right. So your job -- if I was to hand you nine
16 shell casings that were found in the car, and later on I find
17 the gun, part of your analysis is sometimes to see were those
18 casings fired by that gun?

19 A Correct, yes, sir.

20 Q Is that fair to say?

21 A Yes, sir.

22 Q Were you asked to do something like that in this case?

23 A Yes, sir, I was.

24 Q Okay. Now, tell us, how do you do that if a gun is
25 broken in two parts?

1 **A** In this particular case, when the gun was broken, we have
2 a few parts of this gun. And this particular gun, this was an
3 H&K Model VP9. It has a polymer frame, which is the part that
4 holds the trigger and everything together to allow you to fire
5 the gun. And then we had the slide, the barrel, and what we
6 call a recoil spring assembly. That's what slams the slide
7 back forward once it's been moved to the rear.

8 So, we did not -- that gun, as it came in to me, was not
9 functional because that frame had been broken. So, what I
10 did -- we usually -- if we have one in our reference
11 collection, we would note it and use one from our reference
12 collection and use the frame because the markings I'm looking
13 for would be left by the barrel and the slide, which we had
14 intact.

15 So, what I did, I called around local dealers who dealt
16 with H&K, the particular model of this firearm. I was able to
17 find a dealer, Shooter's Choice, who was a dealer in H&K, and
18 they had one there that I could use.

19 So, one of the gentlemen from Shooter's Choice brought
20 the firearm to me. I documented the serial number of what it
21 was. And what I did is I used its frame. I didn't use the
22 slide or the barrel or recoil spring from it. I took that off
23 and interchanged it with the evidence that was collected.
24 Since I could do that, those are the only parts I needed to
25 use to analyze the bullet in the cartridge case.

1 So, I then test fired the firearm successfully using a
2 substitute frame. I was able to get exemplars, which are test
3 bullets and cartridge cases fired from that gun so that I
4 could use for comparison to the evidence that was submitted.

5 **Q** Okay. So, I guess let me ask you this real quick: How
6 many times have you performed analyses like this? I don't
7 mean with a broken gun, but testing a firearm against some
8 cases that were collected at a scene?

9 **A** Over my years, doing it? Over 500.

10 **Q** And how many years have you been with the Richland
11 Sheriff's Department?

12 **A** I've only been with Richland Sheriff's Department since
13 July 9th, 2018. I started my career January 4th, 2010, at the
14 Georgia Bureau of Investigations, Division of Forensic Science
15 Lab, located in Atlanta, Georgia. And then I relocated. I'm
16 originally from South Carolina, so I was trying to come back
17 to be closer to home. And the job opportunity opened up with
18 Richland County Sheriff's Department Forensic Sciences
19 Laboratory, and I was deemed qualified enough to be hired and
20 worked since then here.

21 **Q** Are you required to do training and updates and whatnot
22 annually?

23 **A** Yes, sir.

24 **Q** And have you testified as an expert before?

25 **A** This is my first opportunity in South Carolina. I have

1 testified and been qualified as an expert in the State of
2 Georgia 70 times.

3 Q Seventy?

4 A Yes, sir. Seven-zero.

5 Q And what do you qualify as? A firearm and toolmark
6 examiner?

7 A Yes, sir.

8 MR. SCOTT: Your Honor, the State will offer Jason Roach
9 as a firearm and toolmark expert -- analysis -- let's say
10 firearm and toolmark analysis expert.

11 THE COURT: Go ahead and do the whole -- ask him all the
12 questions for -- to qualify him.

13 MR. SCOTT: Okay.

14 THE COURT: The scientific...

15 BY MR. SCOTT:

16 Q Is this, I guess, your particular expertise? Is this a
17 scientifically accepted method as far as examination?

18 A Yes, sir. We have an international organization called
19 the Association of Firearm and Toolmark Examiners, which offer
20 research and a peer-reviewed journal for the testing of the
21 firearm identification theory and its training and suggestions
22 of its training and how to train a firearms examiners and what
23 continuing education is suggested for a firearms examiner and
24 annual proficiency testing to be reported to our
25 accreditation.

1 Q Okay. So this is a scientifically accepted mode of
2 analysis?

3 A Yes, sir.

4 Q You said you testified as an expert 70 times before?

5 A Yes, sir.

6 Q You've performed 500-plus examinations of this means?

7 A Yes, sir.

8 MR. SCOTT: Your Honor, I think his testimony would help
9 the trier of fact in understanding something that's not
10 generally known, through his expertise and experience. We
11 would offer him his time as an expert.

12 THE COURT: All right. Any voir dire from...

13 (No response.)

14 THE COURT: No? All right.

15 All right. And no objection?

16 (No response.)

17 THE COURT: All right. I do find that, pursuant to
18 Rule 701, 702, that the witness has indicated that the method
19 that he uses is -- it's been scientifically tested, has been
20 peer reviewed, that he has testified 70 times as an expert in
21 Georgia, and that he has performed the testing over 500 times.
22 I do find that the witness is an expert in the area of -- is
23 it firearm examination? Is that what you're trying to qualify
24 him?

25 MR. SCOTT: Your Honor, yeah, he's listed as a firearm

1 and toolmark examiner, so I qualified him as an expert in
2 firearm and toolmark analysis.

3 THE COURT: Ladies and gentlemen of the jury, normally, a
4 person cannot give opinion testimony. Normally, when a person
5 testifies, they must testify as to what they either saw,
6 heard, or sensed by smell or something of that nature.
7 However, there is an exception. When someone is qualified
8 because of education or experience, they are permitted to give
9 their opinion in certain areas if the Court qualifies them
10 that way.

11 This witness will be qualified in the area of firearm --
12 as a firearm examiner and toolmark analysis, to give opinion
13 testimony in that area. That does not mean that you must
14 accept that opinion, but it is evidence for you to use in any
15 way you see fit and give it the weight and credibility you
16 believe is appropriate.

17 All right. Thank you.

18 Yes, sir, you may continue.

19 BY MR. SCOTT:

20 Q Investigator Roach, this is State's 69.

21 A Yes, sir.

22 Q That's already been introduced into evidence. Do you
23 recognize that?

24 A I do, yes, sir.

25 Q And what is it?

1 **A** State's Exhibit 69 is my Item 32. It's in a different
2 box. That's incorrect. That's my -- actually, my Item 31.
3 Yes, my Item 31. It is a piece of a broken frame of an H&K
4 VP9. It has my initials, and it has a unique case number, and
5 the item number. I misspoke; it is Item 32.

6 It also has the barrel, slide, and recoil spring assembly
7 here, which I mentioned earlier, and then other parts --
8 brand, color, polymer parts -- that go with the frame.

9 **Q** And then State 70's, do you recognize that?

10 **A** Yes, sir. State's 70 is a broken green-in-color polymer
11 grip. It's my Item 135 of my report. And it has my -- I mark
12 with my initials, the item number, and the unique case number,
13 as well as it also has inserted in it the magazine. Also,
14 Item 135 are my initials and case number and item number.

15 **Q** State's No. 71, what are these?

16 **A** State's Exhibit 71 are my Items 33 through 43, which are
17 all individually packaged, 9-millimeter Luger caliber
18 cartridge cases. I recognize each of them by -- they have our
19 unique case number, the item number, as well as my initials on
20 each package.

21 **Q** Does that show who those were collected by?

22 **A** On the front of the package, it would show it was
23 collected by S. Humphries, which would be Sarah Humphries.
24 Her new name is now Sarah Holt.

25 **Q** Okay. And you just testified those were collected from a

1 car that's associated with this incident. What can you tell
2 us about those casings in relation to State's 69 and 70, that
3 being the two parts of the broken gun?

4 **A** So, as I stated earlier, the parts, 69 and 70, with the
5 broken frame, I was able to get a replacement frame and used
6 that frame to hold the pieces together that I needed, which
7 were the barrel, slide, and recoil spring assembly, as well as
8 the magazine which I just previously published, and test-fired
9 into our water tank. Our water tank is, basically, a
10 600-gallon steel tank that I use to shoot into. It also has a
11 net on the outside of it of a shooting port.

12 When I shoot into the water, the water slows down the
13 bullet that I test fired so I can have a -- so I can have a
14 pristine example, as well as the net catches the expelled
15 cartridge case or ejected cartridge case, so that I can
16 collect those and use those to analyze against evidence that
17 was submitted.

18 So, once I was able to do that, the first thing I looked
19 at was all of my evidence together. So, all of the cartridge
20 casings in State's Exhibit 71, I was able to look at all of
21 them and identify them all together.

22 Now, the way I do that, we break these down into what we
23 would call class characteristics and individual
24 characteristics. Class characteristics: 9-millimeter is a
25 caliber. Think of it like a parking garage full of Honda

1 Accords. They're all Honda Accords. They're all the same
2 type, and that means they're all the exact same.

3 I then narrow it down by looking at individual
4 characteristics. Those are characteristics that are
5 imperfections that are left by the firearm onto that cartridge
6 case. So there's nicks, dings, and burrs and toolmarks that,
7 when the cartridge case slams back against that slide to make
8 it retract and pull out the spent cart -- excuse me, the
9 cartridge case and eject the cartridge case, it'll leave those
10 unique characteristics on those cartridge casings.

11 The reason I can observe them is I have what's called a
12 compound microscope -- excuse me -- a comparison microscope.
13 It's two compound microscopes with one optical bridge. It
14 allows me to look at two things at the same time, under the
15 same lighting and magnification. And underneath that
16 magnification and lighting, I observe unique, individual
17 characteristics that are random imperfections from the firearm
18 that have been transferred onto the cartridge cases.

19 And I look for what is called a pattern. Some people can
20 compare it to looking at a fingerprint. I look for that same
21 pattern on what we call the head stamp of the cartridge cases
22 where it has the caliber designation and the manufacturer.
23 And I look at the primer area as well, also the firing pin
24 impression. So, that's part of the firearm that strikes that
25 primer to initiate that spark for the whole firing process to

1 begin.

2 And I look at -- find that particular pattern. Once I
3 find that particular pattern and I can find a repeatable
4 pattern using the cartridge case, I would then compare it to
5 each one. In this case, for all the cartridge cases that were
6 collected, they were all fired by the same firearms, in my
7 opinion and my conclusion.

8 Next, I took the gun, as I said earlier, took the part of
9 the slide barrel and recoil spring assembly, took the
10 substitute frame. I was able to create test fires and look at
11 the unique markings left by this slide and barrel onto the
12 cartridge casings, and I was able to identify that State's
13 Exhibit -- the slide and barrel from State's Exhibit -- and
14 recoil spring assembly -- from State's Exhibit -- 71; is that
15 correct? No.

16 Q There's a 70 and 69.

17 A 70 and 69? State's Exhibit 69, the fired -- the
18 cartridge casings that were collected.

19 Q Okay. So, just the long and short of it is, those
20 9-millimeter casings were fired by one single gun?

21 A Correct.

22 Q And that one single gun was the gun you pieced together
23 that was found at the scene?

24 A Correct, yes, sir.

25 Q Would you do me a favor? And if you need gloves, we got

1 some gloves here.

2 **A** Oh, I'm all right.

3 **Q** Let's see if you take the -- I guess, the serial number.
4 Is that located on the slide portion of the pistol?

5 **A** Well, the correct serial number, according to the ATF, is
6 the one that is on the actual frame. And the part of the
7 frame that was broken and still connected to the slide barrel
8 and recoil spring is right here on State's Exhibit 69. And it
9 is also repeated onto the slide and barrel area.

10 **Q** Okay. Now, this is State's 67. This has previously been
11 admitted into evidence. It was found on a black LG phone. If
12 you could, would you be able to compare the serial number on
13 this phone to the serial number on the slide you have,
14 State's 69?

15 **A** The serial number on the slide in State's Exhibit 69
16 reads as follows: it's 224-175506. And this picture, which
17 is State's Exhibit 67, is a picture of what appears to be a
18 firearm with visible -- a serial number that says 224-175506,
19 which is the same number that I just read from State's
20 Exhibit 69.

21 **Q** Okay. Does it have the same general characteristics of
22 the two portions of the gun you examined?

23 **A** Yes, sir, it does.

24 **Q** Sort of an olive green kind of with a black slide?

25 **A** It's more of a gray in color.

1 Q Okay. Does it appear to you that State's 67 is the
2 firearm you examined?

3 A That is the correct serial number for the firearm that I
4 examined, yes, sir.

5 Q And does it have the same general physical
6 characteristics?

7 A When pieced together, yes, sir. It's consistent with a
8 picture of a Smith -- excuse me, of an H&K VP model.

9 Q Your expert opinion is, again, that State's 69 and 70,
10 when pieced together, form the gun that fired those nine
11 cartridge casings that were collected at the scene?

12 A Correct. I was able to do that through a process called
13 fracture matching. I take molds of the area that were broken
14 and cracked. I then -- it was called microseal (ph). So it's
15 a liquid hardener, almost like an epoxy, and it comes in
16 different colors. I put that on two areas. One from the
17 broken part of the frame that was attached to the recoil
18 slide -- excuse me -- the recoil spring assembly, slide and
19 barrel, State's 69, as well as from State's Exhibit 70, on the
20 broken grip of the firearm. And through microscopic analysis
21 of those toolmarks or the fracture of those two areas, I was
22 able to conclude that they were once one item. So, that would
23 mean that these were all once together, one item that formed
24 one frame for one firearm.

25 Q Thank you. Investigator Roach, that's all the questions

1 I have for you.

2 THE COURT: Any cross-examination?

3 (No response.)

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

5 Any objection to this witness being excused?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Sir, you're free to leave.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: All right. Ladies and gentlemen of the jury,
10 we have been going about an hour and a half, and so we're
11 going to go ahead and take our morning break for you to
12 refresh yourselves. So, we'll take about a ten-minute break.

13 Please do not discuss the case during the break, and
14 we'll see you back in about 10 minutes.

15 (The jury exited the courtroom at 11:32 a.m.)

16 THE COURT: All right. We'll take a -- we'll take a
17 break. And if you-all can see if Mr. Brown needs to use the
18 restroom so he can go.

19 (A brief recess was taken from 11:32 a.m. to 12:16 p.m.)

20 MR. SCOTT: Judge, can we take up that one matter before
21 the jury comes in?

22 THE COURT: Sure.

23 MR. SCOTT: There is a witness, Your Honor, that was --
24 we had anticipated or subpoenaed to be here at 10:30 today. I
25 spoke with him as recently as yesterday afternoon. He

1 indicated that he understood the obligations that he had,
2 based on the subpoena, indicated that he would be here. He is
3 not here. We have done a thorough check of the courthouse.
4 He is not answering his phone.

5 Just based on the obligations of the subpoena, based on
6 the necessity of having witnesses come to court when ordered
7 to do so, frankly, for concern of his own safety, we would ask
8 for a bench warrant to be issued.

9 At this point, it is now 12:15 by my watch -- 12:17 by my
10 watch. And, again, he was ordered to be here almost two hours
11 ago. He's not here and he's not answering his phone.

12 THE COURT: All right. Any anything from the defense?

13 MR. SUTHERLAND: I mean, I think great, but, you know,
14 I'm just sitting here, so...

15 THE COURT: All right. If he's not -- if he's not here
16 by the time we break for lunch, I'll sign a bench warrant
17 then, just in case he had car trouble or something like that.

18 MR. SCOTT: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 Let's bring them on in.

21 (The jury entered the courtroom at 12:18 p.m.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 MR. SCOTT: All right. Thank you.

24 Call your next witness.

25 MR. SCOTT: The State calls Kevin Loftis.

1 KEVIN LOFTIS,
2 after having been duly sworn, was examined and testified
3 to as follows:

4 THE CLERK: Thank you. Please have a seat in the witness
5 stand, and state your full name for the record.

6 THE WITNESS: Kevin Loftis, L-o-f-t-i-s.

7 DIRECT EXAMINATION

8 BY MR. SCOTT:

9 Q Loftis, where are you working now?

10 A I work for the Federal Bureau of Investigation.

11 Q You're in the FBI now. In November of 2018, where were
12 you employed?

13 A I was employed by Richland County Sheriff's Department.

14 Q As?

15 A As a criminal investigator.

16 Q Okay. And did you have occasion to be involved in this
17 particular incident of the shooting at or near [REDACTED] Whispering
18 Pines Road?

19 A I did.

20 Q Okay. Tell us the gist of the investigation. Whenever
21 it first came to your -- into your hands, what was going on?

22 A Sure. I was -- we have a group amongst Investigations
23 that's considered homicide on-call. There's a small group of
24 us. So, for a week, you catch all and any homicides or major
25 violent crimes that occur.

1 That was my week. I was out working as normal. A call
2 came in. Deputies responded out to Whispering Pines. They
3 recognized that they had deceased people and people going to
4 the hospital with multiple gunshot wounds. So, I was -- I was
5 notified.

6 My sergeant, who runs things, he went to the scene and
7 took a couple of the other investigators out there to do the
8 preliminary stuff, make sure Crime Scene is out there and all
9 that.

10 My job, as being the primary homicide guy, is to go to
11 the hospital initially -- and, you know, we had two victims
12 there -- and try to see if we could get any kind of -- any
13 information before typically they get medicated or whatever
14 where they can't give us anything. So, we're trying to solve
15 things quickly to get these dangerous people or persons off
16 the street as quick as possible.

17 Q All right. Let me recap. There's been some testimony,
18 at the scene here at [REDACTED] Whispering Pines Road, is it your
19 recollection that there was one deceased at the scene?

20 A Yes, sir.

21 Q Okay. And do you remember who that was?

22 A Yes. It was Ms. Richardson. Jasmine.

23 Q There was, you said, two individuals who were taken to
24 the hospital?

25 A Yes, sir.

1 Q And those were who?

2 A Mr. Brennan and then also Mr. Williams. Excuse me.

3 Q Okay. Brennan Montgomery --

4 A Yes, sir.

5 Q -- and Taurus Williams were alive when investigators got
6 to the scene?

7 A Well, when they were transported to the hospital, they
8 were, yes, sir.

9 Q Okay. At the hospital, did Brennan Montgomery or Taurus
10 Williams pass away?

11 A Yes, sir.

12 Q Which one passed away?

13 A I was in the trauma room when Mr. Montgomery passed away.
14 He fought very hard, though.

15 Q All right. So, after November 7th, three victims in your
16 case. By November 8th, two of them are deceased, that being
17 Jasmine Richardson and Brennan Montgomery?

18 A Oh, yes, sir.

19 Q Was Brennan Montgomery ever conscious to give a statement
20 or anything, account of events?

21 A No, sir.

22 Q Taurus Williams, when did you first encounter him at the
23 hospital?

24 A That same evening. I spoke to him also in the trauma
25 room. They were working on him. They had him highly

1 medicated because of the gunshot wounds that he had. It just
2 wasn't a good time to get good information from him. I
3 wanted, obviously, to have a little bit more of clarity on his
4 part without the narcotics that they put into him.

5 **Q** Okay. What were the nature of his wounds that you
6 observed?

7 **A** Well, the nature?

8 **Q** Of his wounds. What kind of wounds did you observe for
9 him to have at the time?

10 **A** Oh, so he had -- he had -- he was shot through and
11 through in the shoulder. He was shot in the head. It was his
12 ear, though, that was grazed. And then he was also -- excuse
13 me one second to get this correct.

14 So, he was shot in the chest, the shoulder, the head, and
15 was severely beaten. The gunshot to the head was a graze and
16 the shot in the back shoulder was through and through, exiting
17 his upper chest. That's the extent of his injuries at the
18 time.

19 **Q** Okay. Describe -- did you have an occasion to speak with
20 him at some point?

21 **A** Yes, sir.

22 **Q** Describe his willingness to speak with you about what
23 happened.

24 **A** He was willing, but his statement was not completely
25 truthful, initially. He had a lot of family members in the

1 room with him and a lot of folks sitting in there that may not
2 have been family as well.

3 Q Okay. Initially, during this point, he had a lot of
4 people in the room with him?

5 A Yes, sir.

6 Q Did he indicate the identities of the people who were
7 involved in this shooting?

8 A So, not initially.

9 THE DEFENDANT: Hearsay.

10 THE COURT: Hold on one second.

11 THE DEFENDANT: Hearsay. That's hearsay.

12 THE COURT: Hold on one second.

13 Did he identify the people that were in the room?

14 MR. SCOTT: Do you want me to repeat the question then?

15 THE COURT: Yes.

16 BY MR. SCOTT:

17 Q It was, Did he indicate the identities of the people
18 involved in the shooting?

19 A Yes, he did.

20 THE COURT: All right. Hold on one second.

21 His objection is to hearsay. I'll be glad to hear from
22 you as to the objection.

23 MR. SCOTT: Okay. Well, the statement was it was not
24 what -- or the question is not what the statement was. It was
25 whether he indicated. And the answer is yes or no.

1 THE COURT: All right. Ask the next question.

2 MR. SCOTT: Okay.

3 BY MR. SCOTT:

4 Q So he did indicate who the suspects were?

5 A Yes, sir.

6 Q Okay. After that, did you continue your investigation?

7 A Yes, sir.

8 Q Okay.

9 THE COURT: All right. So, the objection is overruled
10 based on the form -- overruled based on the form of the
11 question.

12 MR. SCOTT: Thank you, Your Honor.

13 THE COURT: But go ahead and just be mindful of the
14 rules.

15 BY MR. SCOTT:

16 Q Okay. Did you continue your investigation after speaking
17 with Mr. Taurus Williams?

18 A Yes, sir.

19 Q Okay. Let me back up. We were talking -- you said,
20 initially, when he had a lot of people in the room, he was --
21 how did you term his --

22 A He was reluctant to be completely truthful.

23 Q Okay. At some point, though, what did he do as far as
24 all the people in the room?

25 A Well, at the time, I -- excuse me -- I had told him that

1 we found his cell phone and that I was asking him if I could
2 have consent to search his phone so that we could learn more
3 information about what was going on prior. Once that came up
4 that I was intending on searching his phone, he asked
5 everybody in the room to leave.

6 THE DEFENDANT: Hearsay. Hearsay.

7 THE COURT: All right. Sustained. You can't say what --
8 he can't say what he said.

9 BY MR. SCOTT:

10 Q You can't say what he said.

11 After speaking with him, okay, did the people leave the
12 room who are in there?

13 A Yes.

14 Q Okay. Again, without saying what he said, describe his
15 level of communication or cooperation after these spectators
16 left the room.

17 A Complete cooperation.

18 Q Okay. And you said, at some point, then, he mentioned
19 some names, but you're not going to say who they were. But he
20 did mention some names?

21 A Yes, sir.

22 Q Can you show us on this map -- do you recognize this map?

23 A Yes, sir.

24 Q And do you remember things like where the frame of the
25 gun were found and where the (indiscernible) of the gun were

1 found?

2 **A** Yes, sir.

3 **Q** Do you remember about where Brennan Montgomery was
4 located?

5 **A** Yes, sir.

6 **Q** And Jasmine Richardson?

7 **A** Yes, sir.

8 **Q** And do you see the home at [REDACTED] Whispering Pines in this
9 picture?

10 **A** Yes, sir.

11 **Q** We spent some time there trying to orient the jury with
12 this scene. With the Court's permission, I'm just going to
13 ask you to step down really quick and show me a couple of
14 things on this State's No. 65.

15 All right. This is what road?

16 **A** That's Sharpe Road.

17 **Q** Okay. And I'm gesturing to the top of State's 65.

18 And then the dirt road that comes off Sharpe Road is
19 what?

20 **A** It's Whispering Pines.

21 **Q** Okay. Do you see [REDACTED] Whispering Pines Road?

22 **A** Yes, sir. It's hidden under the trees here a little bit.

23 **Q** Okay. And is that the home that Taurus Williams was
24 captured sitting on and the two men were beating him, we saw a
25 little while ago?

1 **A** Yes, sir.

2 **Q** Where, to your knowledge, was -- or generally -- was
3 Brennan Montgomery found before he was taken to the hospital?

4 **A** So, there's some trees right here. He was found on this
5 side of this gravel road right here at Whispering Pines,
6 laying that way with (indiscernible).

7 And, also, a bunch of broken glass in the vicinity as
8 well.

9 **Q** Okay. Also near him, is that, to your recollection,
10 where the grip of the pistol was found?

11 **A** Yes, sir.

12 **Q** Where was the slide of the pistol?

13 **A** The slide was found out into the field area right here.
14 Right in this area in general.

15 **Q** Okay. And whereabouts was Jasmine Richardson found?

16 **A** So, here's the side of the house. I don't know if you
17 guys can see very well, but, basically, the front -- right off
18 of the front corner right there, face down in the -- in the
19 wet dirt.

20 **Q** Okay. So, in this particular picture, we're looking up
21 towards Sharpe Road. Brennan would be on the left side of the
22 dirt road?

23 **A** Yes, sir.

24 **Q** And Jasmine had been found on the right side?

25 **A** That's correct.

1 Q And do you remember where the car --

2 A Yes.

3 Q There was a -- what was it? A Kia?

4 A Yes, sir. Kia Forte, I believe.

5 Q Kia Forte.

6 And I know it doesn't (indiscernible).

7 A If you come down just a little bit further, the road dead
8 ends. The owners -- I believe it's a church, which is over
9 here, owns property beyond that. (Indiscernible). It's nice.
10 They have it fenced off because of all -- of all the illegal
11 dumping.

12 But, anyway, so, this is woodline here -- what, 200
13 yards? 150 yards? -- is the fence, and that's where the Kia
14 was found, just past that fence. He tried to go around it,
15 but the big rocks made his car wreck. So the vehicle was down
16 just past the fence.

17 Q Do you remember this picture? Now, you have Whispering
18 Pines. Do you take a left or a right to get to [REDACTED] Sharpe
19 Road?

20 A So, if you make a left -- this is Sharpe Road, but if you
21 make a left, it goes out to -- it's Fairfield Road or Fair
22 Road. And right on the corner right there is [REDACTED] Sharpe Road.
23 It's a mobile home park. And it would be on the side of the
24 road. It's -- just guessing -- it's a half mile. Roughly
25 half-mile, three-quarters.

1 Q And who lives at Lot [REDACTED] at [REDACTED] Sharpe Road?

2 A The defendant and his father.

3 Q All right. At some point, did you have occasion to speak
4 with a Choatte Neal?

5 A Yes, sir.

6 Q Did you make a decision to get a warrant out for his
7 arrest?

8 A Yes, sir.

9 Q What did you charge -- and I said Choatte. I believe
10 it's pronounced -- the pronunciation is "Koyt."

11 A Yeah.

12 Q But it's still C-h-o-a-t-t-e?

13 A It's just one "T", I believe, but yes, sir.

14 Q Okay. Does -- did you learn a nickname for Choatte Neal?

15 A He has several. It's Trig or Triggerilli, Triggerillo.
16 I -- in my paperwork, I just referred to Trig because I can't
17 spell the other ones.

18 Q Okay. Tell me about when you first look at Trig --
19 Choatte Neal -- what's the first thing you notice about him?

20 A His stature. He's extremely tall, roughly
21 six-foot-eight.

22 Q Okay. And you went and spoke with him?

23 A Yes, sir.

24 Q And, eventually, what were the warrants you got for his
25 arrest?

1 **A** It was the same as the defendant. It's murder times two
2 and attempted murder.

3 **Q** At some point, did you go and speak with Michael Brown?

4 **A** Yes, sir.

5 **Q** Okay. Do you remember when that was?

6 **A** It was the same evening we arrested him. I believe that
7 would be the 9th. Yeah, it was November 9th. Wait a minute.
8 Excuse me. Hold on.

9 Will you give me one second, please?

10 **Q** Okay.

11 (Pause in the proceedings.)

12 **A** Yes, sir. Sorry about that. It was the ninth. I just
13 wanted to confirm that.

14 **Q** Okay. November 9th?

15 **A** Yes, sir.

16 **Q** And where was he located?

17 **A** He was located at his residence.

18 **Q** Okay. And so did you bring him in to be questioned?

19 **A** Yes, sir.

20 **Q** And was he detained at that time?

21 **A** Yes, sir.

22 **Q** Before speaking with him, did you advise him of his
23 rights?

24 **A** Yes, sir.

25 **Q** And what were the rights you gave him? Can you recite

1 the Miranda warning as you would have given him?

2 **A** Yes, sir. Typically, I read. We have a sheet, a Miranda
3 warning. We have them sign it. I read from it so, that way,
4 I never deviate, never say anything out of the way, and also
5 to make sure I get it right, because there's -- there's a lot
6 of important words in your Miranda warning. So, I always make
7 sure I read this sheet to them, and I'll go ahead and do that
8 again.

9 "Your rights. Before we ask you any questions, you must
10 understand your rights. You have the right to remain silent.
11 Anything you say can be used against you in court. You have a
12 right to talk to a lawyer for advice before we ask you any
13 questions. You have -- and to have a lawyer with you during
14 any questioning. If you can't afford a lawyer, one will be
15 appointed for you before any questioning, if you wish. If you
16 decide to answer questions now without a lawyer present, you
17 still have a right to stop answering at any time. You also
18 have the right to stop answering at any time until you talk to
19 a lawyer."

20 That is his rights. And then the waiver of rights
21 follows. And that is, once you -- once they know that
22 they understand the rights, the waiver is: "I have read the
23 statement of my rights and understand what my rights are. I'm
24 willing to talk and answer questions. I understand and know
25 what I'm doing. No promises have been made to me and no

1 pressure or coercion of any kind has been used against me."

2 Q And did he sign those?

3 A He acknowledged both with his signature.

4 Q And did he indicate he was willing to speak with you?

5 A Yes.

6 Q Did he appear to be under the influence of anything?

7 A No, sir.

8 Q Did he appear to have any trouble understanding the

9 rights when you read them to him?

10 A No, sir.

11 Q Were you able to communicate with him freely and clearly?

12 A Yes, sir.

13 Q Did you make him any promises or threaten him in any way?

14 A No, sir.

15 Q When you first begin speaking with him, does he indicate

16 that he has any knowledge of what happened at [REDACTED] Whispering

17 Pines?

18 A To my knowledge, initially, he did not.

19 Q Okay. So, what did you do? Did you confront him with

20 some of the evidence that you --

21 A Yes, sir. Yes, sir.

22 Q Okay. Did he eventually indicate that he was there?

23 A Yes, sir.

24 Q Okay. And did he identify Choatte Neal as being there?

25 A Yes, sir.

1 Q So he identified his co-defendant, Choatte Neal, as being
2 there, too?

3 A Yes, sir.

4 Q Let me ask you this: This particular piece of evidence,
5 the doorbell footage and the security footage from Ms. Swain's
6 front porch, State's No. 64, did you show him this?

7 A Yes, sir, I believe so.

8 Q Did you did you reference this video with him?

9 A Yes.

10 Q Did he, at any point, admit to being on the porch?

11 A Yes.

12 Q Did he identify which one is him?

13 A Yes.

14 Q Did he identify Choatte Neal on the porch as well?

15 A Yes, sir.

16 (Video plays.)

17 Q Okay. Did he indicate who this particular person is, the
18 person on the porch who we see now on the screen?

19 A Yes, sir, he did.

20 Q And who did he say that was?

21 A It was himself, the defendant.

22 Q Okay. Did he ever tell you what he did with that metal
23 rod?

24 A I was told by one of the other subjects -- or, excuse me,
25 defendants, but I don't believe he did.

1 Q This second individual, did he indicate who this was?

2 A Yes, sir.

3 Q And who did he say that was?

4 A He said that was the co-defendant, Choatte Neal.

5 Q Were you present during the search of Micah Brown's home?

6 A I was there when initial entry was made, but once we
7 secured Mr. Brown, quickly put him in a vehicle with me and my
8 -- another investigator, and we brought him up to headquarters
9 to talk to him and charge him formally.

10 Q Did you let him know that a cell phone had been found at
11 his house?

12 A Yes, sir.

13 Q Did you tell him that the black leather jacket or the
14 gray hoodie was found at his house?

15 A Yes, sir.

16 Q And, ultimately, what was he charged with? The charges
17 he's here today facing?

18 A Yes, sir, the same charges. He's here facing murder
19 times two and attempted murder.

20 Q Now, did he admit to being in the car with the three
21 victims in this case earlier that night?

22 A Yes, sir.

23 Q All right. And was it you who -- we heard from his dad
24 yesterday. Did you speak with his dad?

25 A I did not.

1 Q And his co-defendant, to your knowledge, has not been --
2 has not had his trial yet; is that your understanding?

3 A To the best of my knowledge, he has not been tried yet.

4 Q Okay. But both of them are charged with the killings of
5 Jasmine Richardson and Brennan Montgomery?

6 A Yes, sir, that's correct.

7 Q And both of them are charged with the attempted murder of
8 Taurus Williams?

9 A Yes, sir, that's correct.

10 Q Do you see Micah Brown here today --

11 A Yes, sir, I do.

12 Q -- the guy you interviewed and admitted to being here and
13 admitted to stomping on Taurus Williams --

14 A Yes, sir.

15 Q -- and admitted being in the car the night these people
16 were killed?

17 A Yes, sir.

18 Q And were is he?

19 A He's sitting at the defendant's table right there with --
20 with the mask on.

21 Q Okay. Thank you.

22 MR. SCOTT: Your Honor, let the record show he's
23 identified Micah Brown.

24 THE COURT: All right. Any cross-examination?

25 (No response.)

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

2 All right. Ladies and gentlemen of the jury, it is about
3 12:45, and so what we will do is we'll go ahead and take our
4 lunch break, and we will start back at 2:00. We'll start back
5 at 2:00.

6 So, please do not discuss the case. Please do not do any
7 independent research regarding the case and have a wonderful
8 lunch, and we'll see you back at 2:00. All right? Thank you.

9 (The jury exited the courtroom at 12:45 p.m.)

10 THE COURT: Let me find out, just for purposes of this
11 evening -- evening work, how many people need to go vote and
12 everything. Give me one second.

13 (Pause in the proceedings.)

14 THE COURT: Let me see your attorneys one second for
15 planning purposes.

16 (Pause in the proceedings.)

17 THE COURT: All right. So, this is the bench warrant for
18 the witness. And some of the jurors do need to leave early to
19 go vote. And they also wanted to know if we were going to be
20 here on Friday, because they -- because that's a holiday, and
21 so they told me there's a holiday as well here, and that I did
22 not think so, but I was aware that it is a holiday. Veteran's
23 Day.

24 All right. Anything else we need to take up?

25 MR. SCOTT: No, Your Honor.

1 THE COURT: All right. Well, I'll see you-all at 2:00.

2 (A lunch recess was taken from 12:54 p.m. to 2:11 p.m.)

3 THE COURT: All right. Are we ready?

4 MR. SCOTT: All right. Bring them on in.

5 (The jury entered the courtroom at 2:12 p.m.)

6 THE BAILIFF: The jury is seated, Your Honor.

7 THE COURT: All right. Thank you. I hope you had a good
8 lunch. We will continue with the State's case.

9 I'll ask the State to call your next witness.

10 MR. SCOTT: Your Honor, the State calls Dr. Amy Durso.

11 DR. AMY DURSO,

12 after having been duly sworn, was examined and testified
13 to as follows:

14 THE CLERK: Thank you. Please have a seat in the witness
15 stand, and then state your full name for the record.

16 THE WITNESS: Amy Durso. D-u-r-s-o.

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Dr. Durso, what is your -- what do you do for a living?

20 A I'm a forensic pathologist, which basically means I
21 examine bodies after death.

22 Q Okay. So autopsies?

23 A Yeah, by doing an autopsy, which is a full examination of
24 the body after death, to determine cause of death but also to
25 document any illnesses, injuries, pretty much document all the

1 findings in the body and put them together in a report.

2 Q Okay. So to be a forensic pathologist, you have to be a
3 medical doctor?

4 A Yes. So, I got my four-year college degree, and then I
5 went to medical school at the University of North Carolina,
6 Chapel Hill, where I got my M.D. And then I spent four years
7 at Wake Forest getting my -- doing my pathology residency
8 program. Then I spent an additional year at Wake Forest doing
9 a forensic pathology fellowship program.

10 Q Okay. And how long have you been a forensic pathologist?

11 A It's been about 12 years now.

12 Q And I don't know, do you have any idea about how many
13 autopsies you've completed?

14 A Over 3,000.

15 Q And how many times have you testified in state court?

16 A Somewhere between 50 to 100 times probably. I've lost
17 count of that one.

18 Q Okay. And qualified as an expert all those times?

19 A Yes.

20 Q So just an expert in forensic pathology?

21 A Yes.

22 MR. SCOTT: Your Honor, the State would offer
23 Dr. Amy Durso as an expert in forensic pathology.

24 THE COURT: All right. Thank you.

25 Ladies and gentlemen of a jury, once again, I've given

1 you the information regarding expert witnesses. Dr. Durso
2 will be qualified as an expert in forensic pathology to give
3 opinion testimony in that area. That does not mean that you
4 must accept the opinion, but it is evidence for you to use in
5 any way you see fit and give it the weight and credibility you
6 believe is appropriate. All right.

7 BY MR. SCOTT:

8 Q Dr. Durso, on November 8th of 2018, looks like about
9 9:00, did you have occasion to perform an autopsy on Jasmine
10 Richardson?

11 A Yes, I did.

12 Q Okay. And what was her listed age?

13 A 24 years old.

14 Q Okay. I guess just go through your findings and your
15 observations regarding Ms. Richardson, please.

16 A So, you know, we start at the outside of the body and
17 kind of work our way in. But even on the outside, you could
18 tell there were just numerous what we call blunt force
19 injuries. So, a blunt-force injury is anything with, like,
20 you know, not sharp objects. So it could be a baseball bat, a
21 brick, a stone, someone's foot, you know, all sorts of things.
22 Even hitting the pavement would be considered a blunt force.

23 So, she had numerous blunt-force injuries, starting with
24 the head and the neck, just lacerations. So, a laceration is
25 where the skin tears from blunt-force injury, and an abrasion

1 is, like, a scrape.

2 So, on her face and head, I have numerous diagrams
3 showing that they're just injuries to all sides of her face.
4 The front and also the side. Both sides of her scalp resulted
5 in numerous skull fractures. The jaw was fractured on both
6 sides, caused the brain to swell.

7 Do you want me to go through each individually, or how
8 would you like me to describe them?

9 Q I've got a series of pictures, and maybe that would be
10 one way to do it. I'll just sort of go through it that way if
11 that's all right.

12 A Sure.

13 Q Let me show you State's 47. What are we looking at here?

14 A So, this is the forehead of Ms. Richardson.

15 Q Hold on one second.

16 All right. State's 47, what were you saying?

17 A This is the forehead, just showing one of the very deep
18 lacerations. So, again, this is when something blunt hits it
19 and it literally tears the skin and the soft tissue underneath
20 the part. It almost kind of went down to the bone in that
21 area. Again, just -- this is just one blow of many that she
22 sustained to her head.

23 Q A lot of times I'll have you on the stand, and you can
24 pinpoint one specific injury to be the cause of death, but in
25 this case, was there any one singular injury or was it just

1 the combination?

2 **A** Unfortunately, there's just so many. Many individually
3 could have caused the death, but together, you know, it
4 probably accelerated how fast she died.

5 **Q** State's 47, that was a, I guess, significant wound that
6 you observed?

7 **A** Right. This is one of the deeper wounds on her forehead.

8 **MR. SCOTT:** Your Honor, the State does offer State's 47
9 for admission into evidence.

10 **THE COURT:** Any objection?

11 (No response.)

12 **THE COURT:** It will be entered without objection.

13 (State's Exhibit No. 47, Autopsy Photographs of
14 Ms. Richardson, was marked for identification and received
15 into evidence.)

16 **BY MR. SCOTT:**

17 **Q** I guess I'm going to have you describe what it is.

18 So, you were describing this, and I think that it's
19 fairly apparent, this is the forehead kind of area of
20 Ms. Richardson?

21 **A** Yeah, this is kind of the central to left forehead. And
22 there's another one off to the right that kind of goes off to
23 the ruler. So, those are two separate injuries. But the one
24 that you have most centered in that photo is one of the
25 deepest lacerations. You can actually feel the skull through

1 that defect.

2 Q Okay. It went down to the skull?

3 A Yes.

4 Q This is State's 49 we're seeing here. You mentioned the
5 right side of --

6 A Right. So, this shows the right side of the head and the
7 neck. It's showing a lot of abrasions, as well as two deeper
8 lacerations. And there's one that looks like -- my hand is
9 kind of holding it open just to show how gaping the wound is
10 in that area.

11 Q Okay. And that was a significant wound that you
12 observed?

13 A Yes. So that, again, went through the subcutaneous
14 tissue. I believe there's an underlying skull fracture in
15 that area.

16 Q Okay. What number is that one?

17 A This is No. 49.

18 MR. SCOTT: Your Honor, the State offers 49 for admission
19 into evidence.

20 THE COURT: Any objection?

21 (No response.)

22 THE COURT: It will be entered without objection.

23 (State's Exhibit No. 49, Autopsy Photograph, was marked
24 for identification and received into evidence.)

25 BY MR. SCOTT:

1 Q And this is the one you're sort of holding it open.
2 That's on the right side?

3 A That's on the right, kind of above the ear there, yes.
4 So, you can see all the kind of fainter red marks are
5 just what we would call abrasions. So, it's just kind of
6 rubbing of the skin. This is more of a direct impact that
7 tears the skin apart.

8 Q Okay. And did you mention these markings here?

9 A Right. So, those are all the abrasions, as well as the
10 neck. There's another laceration there and then another a
11 little further down as well.

12 Q State's 46, that's --

13 A So, this is where we shave parts of the head just to show
14 some of the underlying defects and kind of categorize them a
15 little bit better. It shows the back, top right of her head.
16 And, also, you can see part of that defect I'm holding open
17 right there as well.

18 MR. SCOTT: Okay. The State offers 46 for admission into
19 evidence, Your Honor.

20 THE COURT: Any objection?

21 (No response.)

22 THE COURT: It will be entered without objection.

23 (State's Exhibit No. 46, Autopsy Photograph, was marked
24 for identification and received into evidence.)

25 BY MR. SCOTT:

1 Q This is still on the right side of Ms. Richardson's head,
2 and this was the wound that we saw on the last exhibit?

3 A Correct.

4 Q And this is the wound you say that you actually removed
5 some of the hair to be able to see the wound?

6 A Yes. So, that's another -- it would be considered --
7 because it's a different plane of the scalp, so the way, you
8 know, we kind of discern to how many blows is that, you know,
9 blunt objects don't bend around the head. So, every time
10 there's one at a different plane or surface, that's yet
11 another blow that she sustained.

12 Q State's 45?

13 A So, this is kind of the left side of her head. This was
14 -- actually, where some of the worst injuries were with
15 underlying skull fractures. There's several fairly deep
16 lacerations to these. Like they go down to the bone, and
17 there's also a laceration to the back of her neck, as well as
18 several abrasions.

19 Q Okay. This, too, would have been -- well, you just said
20 it was some of the most significant injuries.

21 A Right. And we had shaved part of her scalp in this area
22 as well in order to see the injuries better.

23 MR. SCOTT: Your Honor, this is State's 45. We'd offer
24 it for admission into evidence.

25 THE COURT: Any objection?

1 (No response.)

2 THE COURT: It will be entered without objection.

3 (State's Exhibit No. 45, Autopsy Photograph, was marked
4 for identification and received into evidence.)

5 BY MR. SCOTT:

6 Q All right. So, this is the left side. And what were you
7 mentioning about your observations?

8 A So, you can see there's kind of a laceration, kind of
9 splits apart, you know, kind of in the central area. Yeah.
10 So, those all kind of run together. So, that's at least one
11 blow there.

12 There's a blow above that too. And then down further,
13 there's that kind of upside down V-shaped laceration. And
14 then, underneath, there's an abrasion on the back of the neck
15 as well. That goes a little bit deeper. And then many of the
16 other abrasions.

17 Q This is State's 50.

18 A So, this is showing more kind of the parts -- a little
19 bit more towards the front of her scalp there and top. Again,
20 on the left side. Like I said, most of the injuries to the
21 head, the worst were on the left side. There's actually a
22 large laceration to her ear. And there was a basilar skull
23 fracture going through the base of her skull. It kind of goes
24 back to where that laceration is in her ear.

25 So, when we moved the brain, we could see more skull

1 fractures at the base of her skull.

2 Q So, State's 50, I guess what's covered with the towel
3 here is sort of illustrated in State's 50?

4 A It's kind of higher up and more to the front, yes.

5 MR. SCOTT: Your Honor, the State offers 50 for admission
6 into evidence.

7 THE COURT: Any objection?

8 (No response.)

9 THE COURT: It will be entered without objection.

10 (State's Exhibit No. 50, Autopsy Photograph, was marked
11 for identification and received into evidence.)

12 BY MR. SCOTT:

13 Q Okay. And --

14 A So, you can see that one right above her ear -- yeah.
15 So, there's that laceration. And then you can see actually
16 her ear is almost completely torn apart in that one area. And
17 there's several more injuries right in front of her ear and
18 back up above her ear as well.

19 Q Okay.

20 A And, again, the one -- the laceration to the ear, we kind
21 of pinpointed the skull fracture kind of coming back from that
22 blow.

23 Q Are you able to opine what kind of object -- what sort of
24 object would create something like this?

25 A I think something that has kind of a sharp corner. Just

1 the V shapes in there usually indicate there's some kind of
2 sharp corner to it, but there's no specific pattern that I
3 could discern.

4 Q Okay. Besides all the wounds to the head and we talked
5 about the neck, what were some other observations you had?

6 A So, she actually had quite a few severe injuries to
7 her -- both of her arms and wrists. So, this is typically a
8 pattern we see in someone that's trying to defend themselves
9 from an attack. So, naturally, if someone's attacking you and
10 you're conscious, you're going to put your hands up to defend
11 yourself.

12 So, there were several fractures. Make sure I get these
13 accurate. So, there is -- along with all the abrasions,
14 lacerations -- and there actually were some injuries that
15 almost kind of went straight through her hand. So, again, I
16 think there was a sharp corner or some sharp part to the
17 object that was kind of perforating through.

18 So, the bones here in the main part of the hand, the left
19 hand were broken. The right wrist, those bones were all
20 broken in the distal part. So, the end part of the arm bone
21 here, also on the right arm, were broken.

22 Q What about the torso? Any observations from the torso?

23 A Right. So, there were several abrasions, both on the
24 left upper back and across the upper chest, but there was only
25 one rib fracture: an acute rib fracture of the right fifth

1 rib on the front. So, other than that, there were no other
2 injuries to the torso.

3 Q In your opinion, could a metal pole have created some of
4 these injuries?

5 A Yes.

6 Q In your opinion, could a pistol -- a hard object like a
7 pistol have created some of these injuries?

8 A Yes.

9 Q Okay. Did you issue a finding as far as manner of death?

10 A This would be considered a homicide.

11 Q Okay. Homicide is the killing of a person by another
12 person?

13 A Yes.

14 Q Not in a legal sense of a homicide, but the medical sense
15 is just --

16 A Right. The taking of another person's life, yes.

17 Q And then cause of death?

18 A I have it listed as multiple blunt-force injuries to the
19 head and upper body due to assault by a blunt object.

20 Q So, basically, 24-year-old Jasmine Richardson was beaten
21 to death?

22 A Yes.

23 Q Okay. That same day, a couple hours later, did you have
24 an occasion to perform an autopsy on Brennan Montgomery?

25 A Yes.

1 Q And I've got the listed time as about 11:00?

2 A Yes.

3 Q Your records show Mr. Montgomery was how old?

4 A Twenty-five years old.

5 Q Okay. What were some of your observations when you
6 examined Mr. Montgomery?

7 A So, Mr. Montgomery had several gunshot wounds, both
8 entrance wounds, exit wounds. So, when we see that, we go
9 ahead and we X-ray the body to make sure we don't miss any
10 projectiles, because we need to recover those and hand them
11 over to law enforcement.

12 So, we went through all of that, and then we track the
13 wounds through to see which entrance goes with which exit,
14 which entrance goes with the projectile we found. And so we
15 ended up finding four different gunshot wounds to
16 Mr. Montgomery. Do you want me to just go through them one at
17 a time?

18 Q Yeah, and I'll see if I've got a picture that correlates
19 with the one you talk about.

20 A So, the first one I describe -- I don't know the order in
21 which they happened; I have no way of knowing -- they all
22 happened around the same time -- is on the right back of the
23 scalp, right kind of top back of the scalp, and it goes
24 through the skin, through the bone back here, and it goes
25 through the occipital portion of the brain. So, it does get

1 the brain back here, which is usually fatal if you get shot
2 through the brain. Not always, but almost always.

3 And then it just kind of goes on the straight down, and
4 the back right of the scalp is where the exit wound is. We
5 did find a little fragment of the lead core of the projectile
6 because he had thickish hair -- thick, curly hair. We did
7 find a little piece of the projectile there.

8 Q Okay. I've shown you 43 and 48. Did those depict the
9 two --

10 A Yes.

11 Q -- the entry and the exit wounds you just discussed?

12 A Yes.

13 Q Which one of those two is the entry?

14 A Well, 48, I believe, shows the entrance from -- the best.
15 Well, the exit. It's kind of hard to --

16 Okay. So, 43 is the entrance, and 48 shows the exit
17 wound the best.

18 MR. SCOTT: Your Honor, the State offers 43 and 48 for
19 admission into evidence.

20 THE COURT: Any objection? You said 43 and 48 or 43
21 through 48?

22 MR. SCOTT: "And." Just two.

23 THE COURT: Any objection?

24 (No response.)

25 THE COURT: All right. Those will be entered without

1 objection.

2 (State's Exhibit No. 43 and No. 48, Autopsy Photographs,
3 was marked for identification and received into evidence.)

4 BY MR. SCOTT:

5 Q Say -- oh, go ahead. I'm sorry.

6 A So, this is the entrance wound, about kind of top of his
7 head. Again, we shaved the hair away so we can actually see
8 the wound a little better and describe it and document it.

9 So, entrance wounds, right when the bullet hits the skin,
10 it kind of pulls the skin in for a split second, and it causes
11 what we call an abrasion color. So you kind of see like a
12 little ring around the edge of an abrasion, and that's how I
13 know that's the entrance wound.

14 Q Okay. And, again, show the jury generally on
15 Mr. Montgomery's head where this would be located.

16 A On the top right side.

17 Q Okay. And 48?

18 A And this is the exit wound. It kind of comes out like in
19 the bottom right scalp, so right behind his ear. So, it's
20 going mainly downwards, I think slightly -- slightly back to
21 front, actually, just the slightest bit, but they were both
22 kind of on this right side, so almost coming straight down.

23 Q Okay. Was that the -- there's one gunshot wound to the
24 head?

25 A That was one gunshot wound to the head.

1 The next gunshot wound I describe involves the left
2 shoulder and chest, or the entrance is actually on the left
3 upper arm.

4 **Q** Is that what that is? State's 44?

5 **A** So, this is actually showing the entrance wounds for the
6 next two gunshot wounds. They were both pretty close
7 together, so yes.

8 **Q** Got a couple of them here. Can you see the left shoulder
9 wound you're discussing?

10 **A** State's Exhibit 41 or 44?

11 **Q** This is State's 41.

12 **A** That shows the entrance wound for the next gunshot wound.

13 **Q** That would be the left shoulder you're talking about?

14 **A** The left shoulder. Or left upper arm, really.

15 MR. SCOTT: Your Honor, the State offers State's 41 for
16 admission into evidence.

17 THE COURT: Any objection?

18 (No response.)

19 THE COURT: It will be entered without objection.

20 (State's Exhibit No. 41, Autopsy Photograph, was marked
21 for identification and received into evidence.)

22 THE WITNESS: So, these are actually two, excuse me,
23 entrance wounds. I'm talking about the one on the bottom that
24 has a little bit of blood trickling out. Excuse me.

25 BY MR. SCOTT:

1 Q Bless you.

2 A So, this actually goes through the left upper arm. And
3 as it goes through this left upper arm and kind of near the
4 chest area, it actually hits a pretty major artery and vein
5 called the axillary artery and vein, which is the major
6 vessels that both send and get blood back from the left upper
7 arm. So, this actually bled profusely. You can even see --
8 even though we tried to clean it up, blood just kept oozing
9 and oozing out of this wound -- out of that after death, just
10 because a large amount of blood was in there.

11 It actually also gets the chest cavity. It gets the left
12 lung, both left upper and lower lobes of the lung. And then
13 we were actually able to recover the projectile from this one
14 in his thoracic vertebrae. So, it hits the bones of his back.

15 Q And then one of the --

16 A And so the next wound up is another entrance wound. It
17 has that same abrasion. It actually has a little bit -- I
18 don't know if you can see well on there, but those little dots
19 around it, very, very sparse, dark red dots. Yeah. So,
20 that's actually called stippling.

21 So, this one -- the other wounds likely happened from
22 farther away, as long as there was no other clothing or it
23 didn't go through any other object. But this one, because of
24 the stippling, that means it's probably within two feet, the
25 end of the gun, because the gunpowder actually comes out and

1 abrades the skin. So, it actually had to be close enough for
2 the gunpowder to cause that. So, that one, I can actually
3 give a range on.

4 But this one goes into the left upper back, and I was
5 actually able to get the projectile from the subcutaneous
6 tissue, so just under the skin of the left back. And this
7 didn't hit any major vessels or any major organs. So, this
8 wound alone would have been painful but survivable.

9 Q Okay. Moving on to whichever picture you want to move on
10 to next.

11 A Yes. And then the last one is the gunshot wound to the
12 right upper arm. This is Exhibit 40, and this shows -- and
13 this is just, again, a pretty superficial wound that goes just
14 through the skin of subcutaneous tissue. It doesn't actually
15 perforate any major organs. Again, this one would have been
16 survivable. And it didn't have any stippling, no soot or
17 anything like that. So, I can't really determine the range
18 other than likely being distant if it didn't go through
19 anything else.

20 Q This is his right shoulder?

21 A Right shoulder. Sorry. Yes. Right.

22 MR. SCOTT: Your Honor, the State offers State's 40 for
23 admission into evidence.

24 THE COURT: Which one?

25 MR. SCOTT: Forty.

1 THE COURT: Any objection?

2 (No response.)

3 THE COURT: It will be entered without objection.

4 (State's Exhibit No. 40, Autopsy Photograph, was marked
5 for identification and received into evidence.)

6 BY MR. SCOTT:

7 Q Okay. Are these two separate --

8 A Right. So, those are the entrance and exit wounds. So,
9 it just goes right through.

10 Q So, the one on the top is an entry?

11 A Yes.

12 Q And then the one on the bottom would be the exit wound?

13 A Yes.

14 Q So, have we covered all those pictures?

15 A Yes. Well, this one shows this stippling. Actually,
16 that's just -- yeah, I believe we covered all the important
17 pictures.

18 That one was kind of -- a lot of that is just blood
19 spatter.

20 Q That's the left shoulder?

21 A Yeah. No -- yes, that's left.

22 Q And that's right.

23 A Correct.

24 Q All right. So, 39 and 42. Just for the sake of
25 completion, 39 -- State's 39 is what?

1 **A** It's a less cleaned-up picture of the left upper shoulder
2 entrance wound. We were able -- a lot of that's just dried
3 blood, and we were able to clean it up better. It looks
4 better in the other photo, I think more accurate, you know.

5 **Q** And so you think the other pictures are probably better
6 pictures?

7 **A** Yes.

8 **Q** Okay. So, how many times was Mr. Montgomery shot?

9 **A** Four times.

10 **Q** Were you able to determine a manner of death for
11 Mr. Montgomery?

12 **A** A homicide.

13 **Q** Homicide for him too?

14 **A** Yes.

15 **Q** And cause of death for Mr. Montgomery?

16 **A** Multiple gunshot wounds involving the head and chest.

17 **Q** Okay. You mentioned the head.

18 **A** So, the head -- the worst two were the head and the one
19 that went through the left upper arm, and it hit the major
20 artery and vein going to the left upper arm, and it also hit
21 the left lung. But the other two would have still contributed
22 towards some bleeding, but alone, they probably would have
23 been survivable.

24 **Q** Okay. So, cause of death in your professional opinion
25 for Ms. Richardson and Mr. Montgomery -- well, manner of death

1 would have read homicide. Cause of death for Mr. Montgomery,
2 gunshot wound?

3 **A** Multiple gunshot wounds involving the head and chest,
4 yes.

5 **Q** Cause of death for Ms. Richardson is a blunt-force
6 trauma?

7 **A** Yes.

8 **Q** Okay. Thank you, Dr. Durso. That's all I have for you.

9 THE COURT: Any cross-examination?

10 (No response.)

11 THE COURT: All right. You may step down, Dr. Durso.

12 Any objection to this witness being excused?

13 MR. SCOTT: No, Your Honor.

14 THE COURT: All right. You're free to leave.

15 Yes, sir.

16 MR. SCOTT: May we approach just briefly?

17 THE COURT: Yes.

18 BENCH CONFERENCE

19 (A bench conference was held off the record and outside
20 of the hearing of the jury.)

21 MR. SCOTT: Your Honor, the State recalls Kevin Loftis
22 just briefly.

23 KEVIN LOFTIS (RECALLED),

24 after having been previously duly sworn, was examined and
25 testified to as follows:

1 RECALLED DIRECT EXAMINATION

2 BY MR. SCOTT:

3 Q Just a couple things I forgot to ask you earlier,
4 Investigator Loftis.

5 And we heard earlier from Mr. Brown's father. Did he --
6 when you spoke with Mr. Brown -- Micah, that is -- did he
7 indicate why he would have left the scene only to return later
8 to the scene?

9 A He did.

10 Q Okay. And what was his explanation? Because you
11 testified earlier that he admitted to that being him on the
12 porch, and that was after he had left the scene when the
13 shooting happened. What was his explanation of why he
14 returned to the scene when he ends up on the porch?

15 A Because he left his cell phone at the scene. He walked
16 all the way back down the road that half-mile, three-quarters
17 to his house. He got his father's phone. It had the Find My
18 Phone app on it, and then walked back so he could locate his
19 phone. They were going back to get the phone.

20 Q Okay. Do you remember if he offered an explanation for
21 what he was doing that he would lose his phone at the scene?
22 What I'm asking is, did he indicate, you know, how he would
23 have -- a phone would have fallen out of his hand or his
24 pocket or wherever he kept it?

25 A I don't recall that question being asked specifically.

1 Q Did he offer an explanation, though, that you recall?

2 A I'm sorry. Again, I don't. I'd have to refresh my
3 memory with the...

4 Q All right. When you were asking him questions after
5 being Mirandized, did you indicate to him that his phone had
6 been taken from his house?

7 A Yes, sir.

8 Q And did you ask for consent to search it?

9 A Yes, sir.

10 Q And he acknowledged that was his phone as that y'all were
11 looking to search?

12 A Yes, sir.

13 Q Ultimately, though, did you get a search warrant for the
14 phone?

15 A I did not -- excuse me. I did get a search warrant for a
16 phone. Sorry.

17 Q Did he indicate what his nickname was?

18 A I know all other parties involved did. I don't recall --

19 THE DEFENDANT: Hearsay. Hearsay.

20 THE COURT: All right.

21 MR. SCOTT: It's a statement by a party opponent, Your
22 Honor.

23 THE COURT: Well, the question is, did he -- does he --
24 the question -- the objection is overruled, but it needs to be
25 as to --

1 BY MR. SCOTT:

2 Q Did the defendant, Micah Brown, indicate to you what his
3 nickname was, if you recall?

4 A I don't recall him indicating that.

5 Q You said Trig was Choatte Neal?

6 A Yes, sir.

7 Q Have you ever heard of anybody called Blocka (ph)?

8 A Yes, sir.

9 Q Who was that?

10 A It is my -- is it the defendant --

11 THE DEFENDANT: Hearsay.

12 THE COURT: Objection overruled. He didn't -- I don't
13 think he said somebody --

14 MR. SUTHERLAND: He's saying what other people are saying
15 though.

16 BY MR. SCOTT:

17 Q How long did you speak --

18 THE COURT: Hold on. You can sit down. Thank you, sir.

19 All right. Go ahead.

20 BY MR. SCOTT:

21 Q You can't talk about what anybody else said. We can talk
22 about what he told you. Okay?

23 A Yes, sir.

24 Q You spoke with him for what, an hour or so?

25 A At least.

1 Q Okay. Did you learn what his nickname was? For him.
2 I'm not talking about anybody else. What did he indicate his
3 nickname was?
4 A I do not recall --
5 Q Do you have your notes?
6 A Sir?
7 Q Do you have your notes up there?
8 A I don't.
9 (Mr. Scott hands documents to the witness.)
10 Q Okay. Do you remember speaking with the defendant, Micah
11 Brown?
12 A Yes, sir.
13 Q And, at some point, did he indicate what his nickname
14 was?
15 A Yes, sir.
16 Q And what was it?
17 A Blocka (ph).
18 Q Oh, I think that's all the questions I have for you.
19 MR. SCOTT: Your Honor, that's all I have.
20 THE COURT: Any cross-examination?
21 (No response.)
22 THE COURT: All right. You may step down.
23 All right, ladies and gentlemen of the jury. It's almost
24 3:00. We're going to go ahead and take our afternoon break.
25 As I had promised, I was going to let y'all leave early. For

1 those of you who need to go exercise your right to vote, I am
2 going to allow you to go do that. And we will start at 9:30
3 in the morning.

4 Please do not discuss the case. Please do not do any
5 independent research regarding any issue in a case. That
6 includes anything on your cell phones, computers, or any
7 search -- searching -- any searching as regarding anything in
8 this case.

9 Have a wonderful evening, and we will see you in the
10 morning at 9:30. Thank you.

11 (The jury exited the courtroom at 2:48 p.m.)

12 THE COURT: All right. Anything we need to take up?

13 All right. Well, I'll see you-all at 9:30 in the morning
14 then.

15 But we'll wait one second and let the jurors get out of
16 the building.

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1 NOVEMBER 9, 2022, at 10:30 a.m.

2 THE COURT: All right. So, good morning. I hope
3 everyone had a good evening, and we are ready to continue, I
4 guess, with the State's case.

5 We have -- you have witnesses lined up for the morning?

6 MR. SCOTT: Yes, Your Honor.

7 THE COURT: All right. So, we'll go ahead and bring the
8 jury in.

9 Y'all want to bring them in?

10 And then we'll -- you got your witness ready?

11 MR. SCOTT: You ready?

12 THE COURT: Before I bring them in.

13 MR. SCOTT: Yeah. He's coming up.

14 THE COURT: Okay. So, I guess we need to wait on him and
15 then bring the jury in.

16 MR. SCOTT: Do you want to bring him in first, you think?

17 THE COURT: Well, which way are you bringing him in?
18 Right through there?

19 MR. SCOTT: Yeah, coming in the back hall.

20 THE COURT: Whatever Deputy Kirkland says.

21 (Pause in the proceedings.)

22 THE COURT: And y'all want him to go ahead and take the
23 stand? All right. And then we'll -- you'll have to go over
24 there and swear him.

25 (The witness enters the courtroom.)

1 THE COURT: All right. Let's bring the jury in. Bring
2 them in.

3 (The jury enters the courtroom at 9:51 a.m.)

4 THE COURT: All right. Good morning, ladies and
5 gentlemen of the jury. At this time -- I hope you had a
6 restful evening. At this time, we are ready to continue with
7 the State's case, and I'll ask the State to call our next
8 witness.

9 MR. SCOTT: Thank you, Your Honor. The State calls
10 Choatte Neal.

11 THE CLERK: Please raise your right hand. Put your left
12 hand on the Bible.

13 CHOATTE NEAL,
14 after having been duly sworn, was examined and testified
15 to as follows:

16 THE CLERK: Thank you. Please state your full name for
17 the record.

18 THE WITNESS: Choatte Rufus Neal, III.

19 DIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q Choatte, where are you from?

22 A Hopkins (ph), South Carolina.

23 Q Hopkins? Is that where you were living in November of
24 2018?

25 A Yes, sir.

1 Q How old are you now?

2 A Twenty-five.

3 Q All right. So you would have been 21, I guess, back

4 then?

5 A Yes, sir.

6 Q Do you remember that day, November 7th?

7 A Yes, sir.

8 Q What was going on?

9 A Well, I had called Taurus to come pick me up to go --

10 Q Okay.. Is that something you would do regularly?

11 A Yes, sir. I called him to give me rides, and I'd pay him

12 for it.

13 Q Did you have a car?

14 A No, sir, not at the time.

15 Q Did you graduate high school?

16 A Yes, sir.

17 Q And so what was the deal? He was kind of like an Uber of

18 sorts?

19 A Yes, sir.

20 Q And that's something you routinely did? You would call

21 Taurus and ask for a ride?

22 A Yes, sir.

23 Q All right. What was the purpose of the ride on

24 November 7th? What were you looking to do or where were you

25 looking to go?

1 **A** I was going to get weed and some money from Micah.

2 **Q** Micah? Do you know Micah's last name?

3 **A** Brown.

4 **Q** Did he go by another nickname?

5 **A** Blocka (ph).

6 **Q** Blocka? And did you often get weed from Blocka?

7 **A** Sometimes.

8 **Q** But you said he owed you money too?

9 **A** Yes, sir.

10 **Q** So, do you remember about what time Taurus came to pick
11 you up?

12 **A** I want to say it was like around 8:00. 8:00. Somewhere
13 around that time.

14 **Q** Okay. And did you tell Micah that you were on the way to
15 get the weed and the money from him?

16 **A** Yes, sir.

17 **Q** Did he know who was taking you to get it?

18 **A** No.

19 **Q** Did you tell him?

20 **A** Well, I told him Taurus is coming to get me, but he
21 didn't know Taurus's real name.

22 **Q** Okay. Well, what did Taurus go by?

23 **A** Ashton.

24 **Q** When Taurus arrived at your house in Hopkins, did he have
25 anybody else with him?

1 **A** Yes, sir.

2 **Q** Who was with him?

3 **A** Jasmine and Brennan.

4 **Q** Okay. Did you know Jasmine and Brennan before this?

5 **A** Yes, sir.

6 **Q** Did you know them well?

7 **A** Yes, sir.

8 **Q** Okay. And so do you remember what kind of car they were

9 in?

10 **A** It was a Kia Forte.

11 **Q** And Taurus was driving?

12 **A** Yes, sir.

13 **Q** And where did you tell Taurus to take you?

14 **A** To Micah's house, off North Main.

15 **Q** Do you remember the road it was on?

16 **A** It was Sharpe Road, I think.

17 **Q** Okay.

18 **A** Yeah, Sharpe Road.

19 **Q** And what was the mood of the car between Hopkins and

20 Sharpe Road?

21 **A** It was good. We was talking, laughing, talking about

22 female -- different females and stuff.

23 **Q** Okay. Do you remember about how long it took to get from

24 Hopkins to Micah's trailer park?

25 **A** I want to say about a good -- probably about a good 40

1 minutes.

2 Q And was he outside waiting for you when you got Sharpe
3 Road?

4 A Yes, sir.

5 Q Do you remember anything about him getting in the car or
6 anything that happened then?

7 A Yes, sir. When we got to his house, I got out. I asked
8 him, "You got my weed and my money?"

9 And he was like, "We got to go down the street to my
10 people's house and get it."

11 So I was like, "Man, this ain't even my car. You got to
12 ask this man is he willing to even take us where you're trying
13 to go to get the weed and money."

14 So, he kind of walk past me, looked in the car, and like,
15 "Yo, you trying to take me down the street? And I smoke with
16 (indiscernible)." This and that.

17 Ashton say yeah. So, he got in the car, and I got in
18 behind him.

19 Q Let me ask you, was it -- were you expecting to buy the
20 weed right there at Micah's house or --

21 A Yeah, I was expecting to just get it from his house and
22 go back to my house. I didn't know that he had to go down the
23 street to go get it.

24 Q Okay. And other times, whenever you go buy weed from
25 him, did he normally deal from this house or did he take you

1 somewhere else?

2 **A** Nah, he just at his house. Or either we -- we would see
3 each other somewhere, and I just get it from him then.

4 **Q** So, are you saying it was unexpected when he asked you to
5 go down the street?

6 **A** Yes, sir, it was unexpected.

7 **Q** So what was the seating arrangement? You said Taurus was
8 driving the car. Who was in the front passenger?

9 **A** Jasmine.

10 **Q** Who was sitting behind her?

11 **A** Brennan.

12 **Q** Okay. Whenever y'all are going, after y'all leave
13 Micah's house, who is in the middle seat in the rear?

14 **A** Micah.

15 **Q** And then who was sitting behind the driver?

16 **A** Me.

17 **Q** So that's -- this is accurate here, what we've done
18 through a prior witness?

19 **A** Yes, sir.

20 **Q** And you're a fairly tall guy, aren't you? How tall are
21 you?

22 **A** Six-seven.

23 **Q** And so is that why you were sitting behind the driver?

24 **A** No. When they came to pick me up, Jasmine was already in
25 the front seat.

1 Q I mean, when you go to the trailer -- Micah's trailer and
2 you pick him up, why did you get out to let him in?

3 A Oh, no, I really got just to get the weed from him and
4 stuff, but --

5 Q I see. Okay.

6 A When he -- when he went to go ask Taurus, he walked past
7 me, and then he just got in. And then I just got in behind
8 him.

9 Q And he says, "We got to go down the street to my people's
10 house"?

11 A Yes, sir.

12 Q And did he give an address or did he just kind of direct
13 Taurus, "Turn here, turn here, turn here"?

14 A He directed him.

15 Q Okay. Do you remember about how far -- what was the
16 destination he told Taurus to go to?

17 A I can't even -- I think it was, like, Whispering Pines.
18 I think that's the name of the road.

19 Q Well, how far away was it from his --

20 A I want to say it was like -- probably like a two-minute
21 drive.

22 Q Two minutes?

23 A Two- to three-minute drive.

24 Q So not far?

25 A Not far at all.

1 Q All right. Do you remember -- do you remember the kind
2 of -- what was -- I guess the -- what's on Whispering Pines
3 where y'all turned in right off Sharpe Road?

4 A Yes, sir.

5 Q What's to the right?

6 A The park. And you got two houses. When you turn in, the
7 park is on the right, and you've got two houses on the left.

8 Q Okay. And then, I guess, how did you know y'all were at
9 the destination? Did he tell him to "stop right there" or --

10 A Yeah, he told him to "stop right here."

11 Q Let me show you -- this is State's 65 and 66. Do you
12 recognize what you're looking at there?

13 A Yes, sir.

14 Q Can you tell what those are?

15 A Yes, sir. I know -- I know this is it.

16 Q Okay. You've probably never seen that address from
17 (indiscernible).

18 A Yeah. This is where we was at.

19 Q Speak up?

20 A I said, "This is where we was at."

21 Q Okay. I'm going to pull up that aerial. I think it's
22 State's 65. Okay. You said there's two houses on the left.
23 You're talking about this one and then this one here?

24 A Yes, sir.

25 Q Is this the playground area you were referencing?

1 **A** Yes, sir.

2 **Q** And whereabouts do you remember him telling y'all to
3 stop?

4 **A** Like, right in front of the playground.

5 **Q** Show me.

6 **A** Right up in that area.

7 **Q** You're saying right here?

8 **A** Yes, sir.

9 **Q** And did he indicate which one of those houses was
10 supposedly his people's house?

11 **A** No, sir. He just told us to "stop right here."

12 **Q** Okay. And then when they stop right there, what happens
13 next?

14 **A** He told me to let him out the car. And I had to use the
15 bathroom. So, I got out that car, and I kind of, like, went
16 to the back of the car. I'm about to pee. And --

17 **Q** Wait a minute. So, he says, "Let me out of the car"?

18 **A** Yes, sir.

19 **Q** And did anybody else get out besides you?

20 **A** No, sir.

21 **Q** Okay. So you get out first because you're blocking him
22 in; right?

23 **A** Yes, sir.

24 **Q** And then what does he do?

25 **A** And then he gets out behind me. And while I'm -- as soon

1 as I go to turn to pee, he started shooting inside the car. I
2 heard gunshots. And I turn around. I'm like, "Yo, what you
3 got going on? Yo, like, what are you doing?"

4 And that's when he up the gun on me. He's like, "Yo,
5 back up."

6 And that's when Jasmine got out of the car, and she
7 started to run toward the playground.

8 Q She got out of the car here and ran this way?

9 A Yes, sir.

10 Q Okay. Did you see what happened to Brennan at this
11 point?

12 A No -- after she ran to the playground, he chased her down
13 and start beating her. Then I went around the car, and I
14 opened the door and grabbed Brennan, like, "Yo," like, trying
15 to wake him up, like, "Wake up, bro, wake up." And then
16 that's when Taurus drove off. And Brennan, I guess, from me
17 trying to hold him and waking him up and the force of the car,
18 he fell out the car into my arms, and I'm trying to wake him
19 up.

20 Q And so, at this point, Jasmine had run off into the
21 playground. And where is Micah at this point?

22 A Hitting her.

23 Q Hitting her?

24 A Yes, sir.

25 Q What was he hitting her with?

1 **A** His pistol at first. And then I think it broke or
2 something, and he started hitting her with her hands -- his
3 hands, I mean.

4 **Q** Was he saying anything?

5 **A** No, he was just hitting her.

6 **Q** What were you doing?

7 **A** Still with Brennan, trying to get him...

8 **Q** And so did Brennan fall out pretty much where y'all had
9 parked the car, somewhere in here?

10 **A** Yes, sir.

11 **Q** Was he still alive, could you tell?

12 **A** Kind of, yeah, because he made this little noise, so...

13 And that's when he dragged Jasmine's body over there
14 towards the trees by the house.

15 **Q** What are you saying to Brennan while he's beating on this
16 friend of yours?

17 **A** I'm like, "Yo, bro. Wake up" like.

18 **Q** What are you saying, though, while he's beating Jasmine
19 over the head with a pistol? Are you saying anything to him?

20 **A** Nah, I was too focused on Brennan. When he dragged her
21 towards the trees, I'm like, "Yo, like, bro, what the..." I'm
22 like, "What you got going on, bro?" Like -- and he's not
23 saying nothing.

24 **Q** Did he say anything about Taurus driving down the road
25 and supposedly getting away or maybe getting away?

1 **A** Yeah, he said -- he said, "Bro, we got to get him."

2 I was like, "Man..."

3 **Q** Hold on. He said what?

4 **A** He said, "We got to go get him." Yeah, so I was like,
5 "Man, I'm not -- don't know what you got going on, bro, but
6 I'm gone." And that's when we left.

7 **Q** Did y'all know Taurus had wrecked his car down the road
8 at that point?

9 **A** Oh, no, not until I got my motion and said that he
10 wrecked his car.

11 **Q** But, y'all -- that night, y'all didn't know he had driven
12 down the road and wrecked?

13 **A** Yeah, I knew -- I seen him drive down the road, but I
14 didn't know he wrecked though.

15 **Q** Okay. So, he's beating Jasmine somewhere in this grassy
16 area of the park?

17 **A** Yes, sir.

18 **Q** And you say the gun broke. How did you know the gun
19 broke?

20 **A** Because I -- seen it in my motion.

21 **Q** Okay. But, that night -- your motion, you're talking
22 about discovery --

23 **A** Yeah.

24 **Q** -- that I have to give you; right?

25 **A** Yes, sir.

1 Q I'm asking you about that night.

2 A That night? Nah, I didn't --

3 Q You're telling me about the motion. I got that.

4 A Yeah, I didn't -- I didn't know that it broke at night,
5 but I seen him hitting her with the gun.

6 Q Okay. And you say -- did she collapse out here or was
7 she still moving after he's beaten her?

8 A No, she collapsed right there.

9 Q And then you say he drug her across the road to over
10 here?

11 A Yes, sir. By the trees.

12 Q Did he say why he was doing that?

13 A No, sir.

14 Q Okay. So y'all leave the scene at that point or what
15 goes on next?

16 A We leave. So, we go back to his house, and once we get
17 to -- we walked back to his house. So, once we get to his
18 house, he told me to go to the back door. He was going to go
19 around the front and let me in.

20 So, once he let me in, he told me to go in his room. He
21 goes in the bathroom and start washing his hands and stuff.
22 And then I'm steady asking him, like, "Yo, bro, like, what
23 happened? Like, what you..." And he's still not saying
24 nothing.

25 So, a couple of minutes go by, then he knows that he left

1 his phone. So, he looked at me. He was like, "Bro, I left my
2 phone." He's like, "I ain't leaving you in my house. You
3 gotta come with me. I'm not letting you out of my eyesight.
4 I'm not leaving you in the house by yourself."

5 So, I'm like, man...

6 So, we walk back down there. And once we get down there,
7 that's when Taurus is on the porch, and he's trying to knock
8 on the door to get attention.

9 Q Were y'all surprised to see him back on the scene?

10 A Yeah.

11 Q When you're walking back up to Micah's house after the
12 killing, why not call the police?

13 A Really scared. If I call the police, then -- you know
14 what I'm saying? Basically he'd probably kill me next.

15 Q When you're walking back to the house and your two
16 friends were laying there dying in mud, why not call EMS? Why
17 not call an ambulance?

18 A Really wasn't in that state of mind. I was panicking.

19 Q All right. Do you remember about how long it took you
20 guys to leave Whispering Pines Road and walk up to Lot No. 18
21 on Sharpe Road?

22 A It was a good little walk. It was a good little walk.

23 Q Was Micah's dad there when you got there?

24 A Yes, sir.

25 Q Do you remember speaking with him?

1 **A** No, I didn't say anything to him.

2 **Q** Do you remember Micah speaking with him?

3 **A** Yes, sir.

4 **Q** What was Micah telling his dad?

5 **A** He was saying something, but I remember he asking -- his
6 dad asking like, "Well, what happened to your gun?" And he
7 said something like he lost it or something like that or
8 something.

9 **Q** Did he mention his phone to his dad?

10 **A** Yeah. He said -- he's like, "I left my phone. I got
11 to..." because his dad was like -- he was calling him, and he
12 was like, he had lost his phone. So, that's when he came in
13 the room. Said something like, "We got to go get the phone."
14 And him saying, "I'm not leaving you here by yourself." This
15 and that. So -- and said his dad offered us a ride, but he
16 didn't want his dad to take us down there.

17 So, once we get back to the scene, that's when we seen
18 Taurus on the porch. And sees him, and he's like -- he's
19 like, "Bro, you got to help me kill him."

20 I'm like, "Man, I'm not helping you do nothing. I don't
21 know what type of sick stuff you got going on, but don't try
22 to drag me into it."

23 He's like, "You're either going to help me kill him or
24 I'm going to kill you." So, that's when he grabbed some type
25 of metal stake out the ground that you've seen in the video.

1 Grabbed it out the ground, and then he tried to get me to go
2 up there first to hit him with it. I'm like, "Nah, I'm
3 not..."

4 Because, in my mind, I'm thinking like, "If I go up there
5 and hit him with it first and then give it to him, then he's
6 going to end up killing the man." I didn't want the man to
7 die.

8 Q Are you talking about this video here?

9 A Yes, sir.

10 Q What was it, him knocking on the door and beating on it,
11 looking for help, that that's what got y'all's attention?

12 A Yes, sir.

13 (Video plays.)

14 Q Who is that right there with the black leather jacket
15 with the gray hoodie?

16 A Micah.

17 Q Was that you out in the yard?

18 A Yes, sir.

19 Q What is Micah saying when he's stomping on Taurus's head?

20 A He was just saying, "Shut up" and this and that.

21 Q Were you saying anything while he's stabbing Taurus with
22 that metal pipe?

23 A No, sir.

24 Q What does he say to you when he hands the stick to you,
25 if anything?

1 **A** He told me to go handle my business.

2 **Q** Who is that we see walking up with the stick now?

3 **A** That's me.

4 **Q** So Micah is now -- he's just sitting out in the yard
5 watching you now?

6 **A** Yes, sir.

7 **Q** What are you saying to Taurus while you're hitting him?

8 **A** When I first went up there, he's just like, "Man, please
9 don't do it." And I was like, "He make me do it, bro. Just
10 play dead." And like he did. And I hit him a couple of
11 times, and that's when I walked back off the porch and gave
12 him the stick. I was like, "Man, bro, let's go, bro. Like
13 the shit you're doing don't" -- you know what I mean? And
14 that's -- while we're leaving, he just threw the stick across
15 the street in the woods.

16 **Q** You say a stick. What was it made of?

17 **A** It was like metal. Made out of metal.

18 **Q** I mean, did y'all think Taurus was dead at this point?

19 **A** Yes, sir, which I didn't want to.

20 **Q** Did y'all know he had been shot?

21 **A** Yes, sir.

22 **Q** All right. So, that's the second time y'all had been at
23 Whispering Pines, because the killing happens and then y'all
24 go up to Sharpe Road. He realizes he left his phone, so y'all
25 go back.

- 1 **A** Yes, sir.
- 2 **Q** That's when that porch video happens.
- 3 **A** Yes, sir.
- 4 **Q** And y'all leave yet again.
- 5 **A** Yes, sir.
- 6 **Q** So, what's the talk when y'all are walking back up to
- 7 Lot ■ on Sharpe Road at this point?
- 8 **A** I'm still asking him, like, "Man, bro, you got to tell me
- 9 something, bro, like, what's the purpose?" And he's still not
- 10 saying nothing.
- 11 So, when we get back to his house, I'm steady pressuring
- 12 him about it. But we get back to his house, he had called
- 13 somebody. I don't know who he called, but he was like, "It's
- 14 done."
- 15 So I'm like, "Bro, like, what the hell are you doing,
- 16 bro?" Like -- and that's when he was like, "Man, they got
- 17 dubbed out."
- 18 **Q** All right. "Dubbed out." What does dubbed out mean?
- 19 **A** It means you get kicked out the gang.
- 20 **Q** Are you in a gang?
- 21 **A** Yes, sir.
- 22 **Q** What is the gang you're familiar with?
- 23 **A** Nine Trey.
- 24 **Q** Is Micah in a gang with you?
- 25 **A** Yes, sir.

1 Q So he's Nine Trey as well?

2 A Yes, sir.

3 Q And dubbed out means you're kicked out of the gang?

4 A Yes, sir.

5 Q And that's what he told you, they had been kicked out?

6 A Yes, sir. But Taurus already had told me that. He's
7 like, "Man, I got kicked -- dubbed out because I was hanging
8 around Jasmine and Brennan." I was like, "Man, I don't care
9 about that, bro. Y'all are still -- I'm still gonna kick it
10 with y'all. Still gonna be cool with y'all and that. They
11 can't tell me who I can hang out with and who I can't hang out
12 with."

13 So, I was still running around with them, going to their
14 house every other day, smoking with them, drinking with them.

15 But, anyways -- but that's when the phone that I had, I
16 had the mother-of-my-child's phone at the time, and it was
17 off. So I asked, I was like, "You got any Wi-Fi?" He was
18 like, "Yeah."

19 So, I connected to the Wi-Fi. She had a little texting
20 app on there, and that's when I called my cousin. I told him
21 where I was. I was like, "I'm at North Main. I need a ride
22 back to my house." So, he came from Broad River to come get
23 me.

24 Well, while I'm waiting on him, this girl named Ayanna --
25 I guess it was his girlfriend at time -- her and this other

1 dude came to the house. So we just over there chillin'. And
2 he was like, "Yo, I just killed two people." I'm looking at
3 him like, "What the fuck?" Like -- and he's like, "Nah, I'm
4 just playing, I'm just playing."

5 And then that's -- there's like -- they was about smoke,
6 but by the time they was about to smoke, my cousin got there,
7 and I had left.

8 **Q** So y'all killed two, maybe three, people, and y'all are
9 chillin' and smoking. Is that what you're telling me?

10 **A** They was about to smoke. I was waiting on my ride.

11 **Q** Chillin'? Never mind.

12 So, you got a ride, and where do y'all go next?

13 **A** Well, my cousin -- he was about to take me back to the
14 house, but I told him, like, man, stop by the gas station on
15 Bluff Road that's connected to a Burger King. I went there.
16 I got a pack of cigarettes, and I got a bag of chips. I ain't
17 eat the bag, but I really wanted a cigarette because I was in
18 a state of mind. I was nervous, panicking. And I was just
19 smoking, just to calm my nerves down. And then, after that,
20 he took me home.

21 **Q** All right. When did you get arrested?

22 **A** November 9th. It was in the morning time.

23 **Q** And you never called the police between the 7th and the
24 9th?

25 **A** No, sir.

1 Q Why not?

2 A Like I said, I was nervous, scared. I didn't know what
3 to think.

4 Q And they took you to the jail after you got arrested.

5 A Yes, sir.

6 Q What are you charged with?

7 A Two counts of murder and attempted murder.

8 Q When they get you, what part of the jail did you go to;
9 do you remember?

10 A I went to -- well, first, I went to the sheriff's
11 department. Then they took me to jail. When I got to jail, I
12 was intake at first. They got to book me in. And then they
13 took me to Yankee.

14 Q Yankee?

15 A Yes, sir.

16 Q Do you remember when Micah Brown got arrested?

17 A I want to say it was a day after I got arrested.

18 Q Did you ever see him at the jail?

19 A Yes, sir, in Yankee.

20 Q Did y'all talk?

21 A Yes, sir.

22 Q What did he say to you about that night?

23 A He was saying that we got to come up with a story. I
24 mean, he wanted me to tell them that I did everything, that I
25 shot them in self-defense because they tried to rob us.

1 Q He wanted it to be a robbery gone bad, and y'all had to
2 shoot them in self-defense?

3 A Yes, sir.

4 Q Did you go with that story?

5 A No.

6 Q Had you seen that gun before, that he had that night?

7 A No, sir. I never seen it until that night.

8 Q He hadn't shown it to you before?

9 A No, sir.

10 Q All right. So, that's what went down that night?

11 A Yes, sir.

12 Q Why did Micah -- why did he change clothes when he went
13 back to his house the first time?

14 A Because it was raining. It was raining. Like, on our
15 way, walking back to the house, it was raining. I guess he
16 wanted to change into dry clothes.

17 Q All right. Do you see Micah Brown here today?

18 A Yes, sir.

19 Q Where is he?

20 A (Pointing.)

21 Q Right there? Okay.

22 All right. Anything else you remember that you want to
23 tell the jury?

24 A No, sir. I told you everything, how it went down.

25 Q Okay. That's all I have. Thank you.

1 THE COURT: All right. Any cross-examination?

2 (No response.)

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

4 All right. Call your next witness.

5 MR. SCOTT: Your Honor, at this time, the State rests.

6 THE COURT: All right. Thank you.

7 Ladies and gentlemen of the jury, at this time, there's a
8 matter of law that I need to take up outside of your presence.
9 I am going to send you out for a moment, and then we will have
10 you back in shortly. Please do not discuss the case. Please
11 do not discuss the case. Thank you.

12 (The jury exited the courtroom at 10:26 a.m.)

13 THE COURT: All right. I'll be happy to entertain any
14 motions at this time. Any motions from the State?

15 MR. SCOTT: Your Honor, just for the record, to consider
16 a motion for a directed verdict. Had there been one -- and
17 I'm prepared to argue, if there had been a motion for directed
18 verdict (indiscernible).

19 THE COURT: All right. Well, any motions -- do you have
20 any other motions?

21 MR. SCOTT: I have no motions, Your Honor.

22 THE COURT: All right. Any motions from the defense?

23 (No response.)

24 THE COURT: All right. So there are no motions from the
25 defense.

DEFENDANT'S RIGHTS

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1 All right. So, Mr. Brown, the defendant -- I mean, the
2 State has rested.

3 MR. SUTHERLAND: Oh, I was just telling him you've got to
4 advise him.

5 THE COURT: Yeah. Yeah.

6 The State has rested their case at this time. Should you
7 -- let me put him under oath.

8 DEFENDANT'S RIGHTS

9 THE CLERK: Please raise your right hand.

10 MICAH BROWN,

11 after having been duly sworn, was examined and testified
12 to as follows:

13 THE CLERK: Thank you.

14 THE COURT: All right. And can you pull the microphone
15 up, since he's got a mask on?

16 All right. Thank you. And you are Micah Christian
17 Brown. At this time, sir, I am going to explain to you
18 certain of your rights. If you do not understand anything I
19 say, please let me know. If you want me to explain anything
20 in more detail, please let me know. Do you understand that,
21 sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. So, we have now reached the stage
24 of the trial where you may present your defense. You have the
25 right to claim the protections given to you by the Fifth

1 Amendment of the Constitution of the United States. This
2 amendment states in part, no person shall be compelled in any
3 criminal case to be a witness against himself. This means
4 that you cannot be required to testify in this case. You have
5 the right to testify on your own behalf; however, no one can
6 make you testify. This is a personal right, and no one can
7 waive this right except you. If you decide to testify, you
8 will be subject to the same rules that govern other witnesses,
9 and you may be examined and cross-examined on any relevant
10 issue in this case.

11 In addition, if you have any convictions involving
12 dishonesty or false statements or for crimes punishable by
13 imprisonment for more than one year and the Court determines
14 that the probative value of admitting the evidence outweighs
15 its prejudicial effect to you, the solicitor will be able to
16 introduce your record to attack your credibility.

17 If you decide to testify, this decision on your part must
18 be freely, voluntarily, and intelligently made with the
19 knowledge of the protections given to you by the Fifth
20 Amendment and the consequences of your decision to testify.

21 If you decide not to testify, sir, I will instruct the
22 jurors that they cannot give the fact that you did not testify
23 any consideration whatsoever, and that there is to be
24 absolutely no prejudice to you because you did not testify.

25 It is left entirely up to you whether or not you testify.

1 You may talk with your standby attorney, your family, and
2 friends or anyone else, but the final decision will be up to
3 you as to whether or not you testify.

4 Do you understand what I've explained to you, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And do you have any questions about what I've
7 explained to you?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And have you spoken with Mr. Sutherland --
10 you've discussed with him the right to testify?

11 MR. SUTHERLAND: And, Your Honor, I believe he's going to
12 remain silent.

13 THE COURT: All right. And do you need any additional
14 time to speak with Mr. Sutherland?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: All right. And I guess I need to ask:
17 What's his -- if he were to testify -- so we'll put it on the
18 record -- what's his record?

19 MR. SCOTT: He doesn't have any adult record, Your Honor.

20 THE COURT: All right. And so, sir, do you need a second
21 -- does he need a second to think about it and talk to anyone
22 else?

23 MR. SUTHERLAND: I believe he's determined to remain
24 silent, Your Honor.

25 THE COURT: Is that correct, sir?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. Thank you. You may be seated.

3 All right. So, it's 10:30. All right.

4 All right. So, if he's not going to testify, we are at
5 the point where we can argue and charge. It's 10:30. I have
6 another matter this afternoon. And so if -- I mean, we can go
7 in and argue and charge, give it to the jury, but if they
8 don't have a verdict by 1:00, I'll have to stop. 1:00, 1:30,
9 release them and then have them come back in the morning.

10 We have a jury charge and then a request from the State
11 as to jury charge. I know you've requested "hand of one, hand
12 of all" the other day. Any other requests?

13 MR. SCOTT: No, Your Honor.

14 THE COURT: Any from the defense?

15 (No response.)

16 THE COURT: All right.

17 MR. SUTHERLAND: I didn't think of it, but it's -- maybe
18 a mere presence -- you know, he's on video doing this thing.
19 But with respect to the murders and the attempted murder, I
20 don't know if they could argue that hitting him with a stick
21 is -- anyway, I shouldn't be talking, Judge.

22 THE COURT: All right. Well, he would need to ask for
23 it. I mean, you can advise -- you can explain to him what
24 jury charges are and allow -- this is when I explain to the
25 jury the law.

1 MR. SUTHERLAND: He's going to remain silent, Judge.

2 THE COURT: All right. So, he's not asking for any jury
3 charges. Okay.

4 All right. So, what we'll do is we'll print those off.
5 We'll give you both a copy. We'll work on a verdict form.
6 Any -- the verdict form will just be straightforward.
7 Straightforward verdict form.

8 On the murder charges, it will say as to victim -- this
9 victim and as to the victim's names, since it's two, and then
10 the attempted. And I put in the -- we've got the specific
11 intent language in there on the attempted consistent with the
12 law.

13 I forgot -- I want to go in there and tell them to pick a
14 foreperson. I'm going to have them pick a foreperson while we
15 print that off. And so what I can do is I will -- we'll leave
16 them back there, but I'll bring them back in. I'll ask the
17 defendant his -- because he'll have to rest on the record.
18 And I'll explain to them that he does not have to -- you know,
19 he does not have to present any witnesses. The burden is on
20 the State, so he doesn't have to say anything. I will explain
21 that to them. Mr. Brown, I'll explain that to them.

22 And then -- and then we'll go ahead and start with
23 closing arguments. And who's closing? In full? Closing in
24 full?

25 MR. SCOTT: Yeah. I think it's just going to be me.

1 THE COURT: All right.

2 MR. SUTHERLAND: I wonder if we -- could we have, like,
3 four or five minutes before this starts, Judge?

4 THE COURT: Oh, yeah. I got to go print out the jury
5 charge. Yeah, I need to -- I need to go print out the jury
6 charge and the verdict form, and then we'll go ahead and get
7 started. Okay. All right. So we'll take a break.

8 (A brief recess was taken from 10:35 a.m. to 10:54 a.m.)

9 THE COURT: All right. So, we are going to bring the
10 jury in. I will explain to them that the defendant does not
11 have to present a case unless he chooses to, and then I'll ask
12 if he is planning on presenting a case, and then if he says
13 no, then we will go straight into closing arguments. All
14 right?

15 And for those of you who are in the audience, when we
16 charge -- when I charge the jury, the door will be locked, and
17 you will not be able to come in or out. So, if you need to go
18 out, you'll need to do it before I charge the jury.

19 All right. Let's bring them in.

20 Is this Juror 101?

21 THE BAILIFF: Yes.

22 THE COURT: All righty.

23 (The jury entered the courtroom at 10:55 a.m.)

24 THE BAILIFF: All jurors are present, Judge.

25 THE COURT: All right. Thank you.

1 All right. Mr. Foreman -- and let the record reflect
2 that Juror No. 101 is appointed as the foreman.

3 All right. Thank you. Ladies and gentlemen of the jury,
4 as you have just heard, before you went on your break, the
5 State has rested their case.

6 At this time, I will ask the defendant if he has any
7 witnesses to call or -- witnesses to call, if he has a case to
8 present.

9 As I told you in the beginning of the trial, the
10 defendant has the -- the burden is upon the State to prove the
11 defendant guilty beyond a reasonable doubt. The defendant in
12 a case is never required to put up any witnesses or present a
13 defense. The burden is solely upon the State, but if he does
14 choose to, now is the time to do so.

15 Mr. Brown, do you wish to present a case?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. Thank you.

18 All right. Thank you, ladies and gentlemen of the jury.
19 At this time, we are ready for closing arguments and the
20 charge on the law.

21 First, we will hear from Mr. Scott on behalf of the
22 State, and then, if Mr. Brown has a response, he will be given
23 an opportunity to respond. But, once again, as I stated, he
24 does not have to. The burden is solely upon the State.

25 And so we will hear from Mr. Scott first, and then I'll

1 give Mr. Brown an opportunity to respond if he chooses to.

2 MR. SCOTT: Thank you, Your Honor.

3 CLOSING ARGUMENT ON BEHALF OF THE STATE

4 MR. SCOTT: Some people get to die in their sleep, maybe
5 with a peaceful dream on their mind and a slight smile on
6 their face. Some people get to die in a comfortable bed, in a
7 room filled with their children, grandchildren, loved ones,
8 with the satisfaction of a full life and the knowledge of
9 accomplishments that they were able to have. They die of old
10 age. Some people would be so lucky to die, like Bing Crosby,
11 playing a round with golf in Madrid and just lay in the grass
12 and pass away.

13 But if you think about it, all those -- and we don't
14 think about it. They say the human mind is just almost
15 incapable of spending more than a couple of minutes thinking
16 about your own death. I mean, we understand we're all going
17 to die, but the human mind just doesn't want to think about
18 it.

19 But if we do, certainly any of those options would be
20 good ways to go, because some people die facedown in the mud,
21 in the pouring rain. Some people are shot to death, by people
22 they knew, without ever having the chance to defend
23 themselves, seated in the back seat of a car, mowed down, left
24 to die like a dog. Some people are bludgeoned to death. Some
25 people are beaten beyond recognition; beaten so hard their

1 skull fractures; beaten so hard with a pistol, the gun
2 actually breaks in two, and then left to die in the dirt.

3 We don't get to choose how we die. We don't get to
4 choose when we die. But you know what? No other person
5 should choose when we die or how we die.

6 Micah Brown shouldn't choose when Jasmine Richardson
7 dies. Micah Brown shouldn't choose when Brennan Montgomery
8 dies. He ain't God. When people do these things, there are
9 consequences. That's why he's here, because he left these
10 families without the people who they love, people who should
11 be here today but for Micah Brown.

12 What have we learned? What has the evidence been and
13 what has the testimony been? November 7th, 2018, by all
14 accounts, was a rainy day. We heard from Choatte Neal, who
15 has testified in front of you.

16 I want to remind you, Choatte Neal still stands charged
17 with two counts of murder and attempted murder. He's going to
18 have his day in court too, and he's going to have to answer
19 for what he's done, these terrible things these two were up to
20 that night.

21 The testimony was Choatte called Taurus Williams. And we
22 wish we had Taurus Williams here, don't we? You know, when I
23 call a case and I send subpoenas out and I want people to come
24 to court to tell us what happened, it doesn't always work.
25 Sometimes people don't want to be here.

1 But the accounts we heard from people who were there was
2 that Choatte Neal, living in Hopkins, called Taurus Williams
3 who seems to be something of an Uber driver, not affiliated
4 with the company, but he would take some money and give people
5 rides, and he was somebody who had given Choatte rides in the
6 past.

7 On this particular day, Choatte Neal says, "I need you to
8 take me to a place up North Main -- Sharpe Road, to be
9 exact -- to Micah Brown's house. He owes me money. And also,
10 I'm going to buy some weed from him."

11 Taurus agrees. Taurus has mutual friends in the car with
12 him: Jasmine Richardson and Brennan Montgomery. See, all
13 these people know one another, is what we've learned.

14 And when Taurus pulls up to the house in Hopkins, Choatte
15 Neal gets in. They make that long ride. I think he said
16 something like 40 minutes it took them to get from Hopkins to
17 Sharpe Road, which is off North Main Street. Choatte directed
18 them to Micah Brown's trailer, Lot ■ off Sharpe Road.

19 He says that, when they get there, Micah -- he gets out
20 the car to go ahead and buy the weed, like they've done it
21 many times in the past, but at this point, Micah says, "No, we
22 need to drive down the road to my people's house to get the
23 weed." It's unusual because, like Choatte said, the
24 transactions normally happened at Micah's house, and he had
25 never been to this particular location off Whispering Pines

1 Road. And that was the testimony, that he directed him to
2 Whispering Pines Road.

3 This house we've been talking about before, the porch
4 video, that's [REDACTED] Whispering Pines Road. You heard the
5 testimony that, as they pull off Sharpe Road, Whispering
6 Pines, they stopped somewhere almost in -- almost in front of
7 [REDACTED], but the car comes to a stop at Micah Brown's direction.

8 As we heard, Micah Brown is sitting in the middle of the
9 back seat. Micah tells Choatte, "Let me out." Choatte gets
10 out. Micah turns around with that pistol, that he has
11 pictures of on his cell phone, that he had sent out two days
12 before the killing, and pulls that pistol out, and just as
13 easy as can be, unloads it into that car on helpless people.

14 Brennan Montgomery, as we heard, he caught one behind his
15 ear. He didn't die immediately, but that was going to be a
16 fatal wound, and he would die eventually.

17 Taurus Williams, the driver, we heard he was shot
18 something like five times, including once through the ear,
19 grazed his head. Should have been a kill shot if it had been
20 a couple inches farther to the right. It went straight
21 through his ear. He was hit in his upper body a number of
22 times, according to Investigator Loftis, who visited him in
23 the hospital. But it didn't kill him.

24 Jasmine Richardson, y'all remember those pictures of
25 trajectory rods going through her head rest. And she must

1 have ducked, because those should have been head shots, too.
2 This man was aiming to kill. Make no mistake about it. His
3 sole intent -- anybody's intent when you're shooting into a
4 car full of people is to kill; right? There's only one reason
5 you do that. And so you look at that head rest, and Jasmine
6 Richardson, he meant to shoot, but he failed to do it.

7 And then that gun (indiscernible), he had that jam in it.
8 And so, when Jasmine took off running through the field, what
9 does he do? Just as cold-blooded as you can imagine, he takes
10 that pistol that was jammed and he uses it a different kind of
11 way: He bashes her head in with it. That's cold-blooded.
12 That's evil. But that's what the testimony was.

13 This is Whispering Pines Road. This is the last location
14 that Brennan Montgomery had a conscious thought, the last
15 location that Jasmine Richardson breathed a breath of air.
16 And this was approximately where they parked that night.

17 When investigators got to the crime scene, this would
18 have been where Brennan Montgomery was. Of course, we don't
19 have the pictures because, when law enforcement gets there,
20 he's still breathing. They get EMS and take him to the
21 hospital where he later, as we've heard, passes away.

22 One of the things they notice is the grip of a pistol
23 laying near where Brennan Montgomery was. This particular
24 area of the playground, that's where the slide was located.
25 And as we heard from Choatte, that's where Jasmine Richardson

1 was beaten to death. Behind the car, again, is where that
2 grip was found. And then, on the other side of the road, is
3 where Micah Brown drug Jasmine Richardson's body and left it
4 in the dirt there.

5 Here's the pistol that was found in the middle of the
6 parking lot -- or the playground. As you can see, the serial
7 number is very clear on the slide. We heard the analyst
8 testify to it.

9 What else did you see here? You're looking at Jasmine
10 Richardson's hair where it stuck to the gun, after being
11 beaten in the head with it. Again, isn't that the same serial
12 number? That is the murder weapon. Okay? That is the murder
13 weapon in Micah Brown's lap two days before the killings,
14 because that's his gun. That's the gun that fired those nine
15 casings. That's the gun that killed Brennan Montgomery.
16 That's the gun that killed Jasmine Richardson. That's the gun
17 that almost killed Taurus Williams.

18 This is Dorasha Swain's house. Thank goodness that
19 camera was there. That camera caught the aftermath of all
20 this, because we hear about these two not calling law
21 enforcement, not calling EMS, just leaving all these people
22 out there to die, and then they walk home.

23 And then you heard the defendant's own father. He says,
24 "It was weird; I had been trying to call Micah to see if I
25 needed to pick him up anything to eat. He wouldn't answer."

1 And we know why, because he left his phone at this murder
2 scene.

3 "But then he and his buddy, a big guy, come in the house.
4 They come through the back door, which is odd. That was weird
5 to me, too. And they're soaking wet."

6 And the father says, "Where have you been?"

7 And Micah is being very evasive. And then Micah says, "I
8 need to borrow your phone, Dad, because I lost my phone."

9 His dad says, "Well, where did you lose it?"

10 He says, "Up the road."

11 His dad says, "Well, it's raining outside. Let me take
12 you to it."

13 Of course, Micah can't take his dad down to this scene,
14 so he says, "I'm fine. I'll go walking to look for it,"
15 which, again, his dad said that was odd to him. And now we
16 know why.

17 But they go back to the scene, and that's that porch
18 video. Poor Taurus Williams, he thought he had gotten away
19 with it, because he hides in the woods after wrecking his car,
20 and once he thinks the coast is clear and he thinks these two
21 were gone, he goes looking for help. Because, again, he's
22 shot. He's bleeding out. He needs help.

23 He goes to the porch, and that's where the video picks
24 up. We see him desperately trying to get the homeowners'
25 attention. As fate would have it, she was out of town. And

1 as fate would have it, these two come back.

2 And poor Taurus is caught up here. He's wounded. He's
3 immobile. He's been shot five times. And just as vicious as
4 you could imagine, he is, again, beaten with a metal rod and
5 stomped on.

6 Did you see how enthusiastic Blocka was, trying to finish
7 this man off? He was very enthusiastic. When we saw the
8 video, he seemed to be getting a lot of pleasure from it. But
9 that's evil. That is cold-blooded right there.

10 The jacket that was found in his house is clearly the one
11 that he's seen on the video wearing.

12 This is a murder case. This is a murder case where
13 malice is more than evident. So, you see, murder -- we all
14 know murder is killing another person. The law says that the
15 State must prove beyond a reasonable doubt that the defendant
16 killed another person with malice aforethought.

17 We got two counts of murder -- right? -- because we have
18 two people who are no longer with us: Jasmine Richardson and
19 Brennan Montgomery. We've got one count of attempted murder
20 because he didn't finish poor Taurus off. He tried to, but
21 his intent -- because Taurus Williams is alive today. He's
22 not here in court this week, but I'm telling you he is alive.
23 He survived that attack.

24 Attempted murder is a person who -- with intent to kill.
25 And, again, we heard Choatte say that Micah said, "We got to

1 kill this guy, and you're going to help." We know his intent
2 was to finish off the man.

3 Attempt to kill another person with malice aforethought,
4 either expressed or implied, commits the offense of attempted
5 murder. So, I've been talking about malice aforethought.
6 What is that? Because that's what this case is about. It's
7 hatred, it's ill will, hostility towards another person. It's
8 the intentional doing of a wrongful act without just cause or
9 excuse and with an intent to inflict an injury or under
10 circumstances the law will infer an evil intent.

11 Have you ever seen anything as evil as what you've seen
12 in court this week? If you look up "evil" in a dictionary,
13 it's this case. It's this man's actions.

14 How can malice be shown? It can be expressed or
15 inferred. Expressed would be when he says we need to kill
16 these people. Words. Implied could be just a complete
17 reckless disregard for the value of human life.

18 Did anything you saw in court this week show that this
19 man has any value whatsoever for human life? To shoot a man
20 seated in a car, helpless, leaving him on the side of a dirt
21 road, to beat a woman in the head so hard a gun breaks, to
22 shoot a man five times and then later strike him with a metal
23 rod until you thought he was dead, does that show any value
24 for human life? No. This man does not care about human life.
25 That's malice. Because it may be inferred from the conduct

1 showing a total disregard for human life. That's malice.

2 This is what malice looks like. This is what malice
3 looks like. This is Micah Brown, November 7th, the human
4 embodiment of malice. I've got to prove these things beyond a
5 reasonable doubt. It's the highest standard in the law. And
6 it's not that I have to prove my case just a little bit more.
7 It's beyond a reasonable doubt. It's not insurmountable.
8 Anybody who's ever been convicted from here to California was
9 proven guilty beyond a reasonable doubt.

10 But what does that mean? Does it mean beyond all doubt?
11 No. It means that you have to have a doubt that is reasonable
12 and based on logic. If you do, you should find the defendant
13 not guilty. If you think -- if you think you have a
14 reasonable doubt that he may not have killed these people and
15 he may not have almost killed Taurus Williams, you find him
16 not guilty. But, on the other hand, if your doubt is not
17 reasonable or your doubt is not really logical, you should
18 find the defendant guilty. That's what the judge is going to
19 tell you as far as reasonable doubt. That's what reasonable
20 doubt is.

21 Does it mean you have to be 100 percent certain? No.
22 There is almost nothing we know with 100 percent certainty,
23 and beyond a reasonable doubt is not a standard that requires
24 beyond all doubt, 100 percent certainty.

25 In criminal cases, the law does not require proof that

1 overcomes every possible doubt. "Based upon your
2 consideration of the evidence, you are firmly convinced."
3 That's the best way to describe beyond a reasonable doubt.
4 Are you firmly convinced? If you are, you must find the
5 defendant guilty.

6 And I think that's the judge's instructions. When she
7 reads the instruction on reasonable doubt, I think she's going
8 to use the term "firmly convinced" twice. If you are firmly
9 convinced this man did these things, you must find him guilty.

10 We don't get to choose how we die, when we die, but
11 neither does Micah Brown. On November 7th, he decided he was
12 the executioner, and he was going to take these people's
13 lives, but (indiscernible) that their moms were going to be
14 left without a child, their sister was going to be left
15 without a brother. He was just going to do what he was going
16 to do. And we don't -- we don't allow that. And there are
17 consequences for this.

18 Ladies and gentlemen, I told you at the beginning, we
19 were going to ask you to find him guilty of these charges.
20 I'm going to sit down now. The evidence is what it is, and
21 you're going to have it back there. You're going to consider
22 that. You're going to consider the testimony you've heard.

23 I'm going to ask you to deliberate amongst one another,
24 ask questions of one another, but use logic. Use that
25 reasonable common sense you all have. Deliberate, but come

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1 back with the only verdict that speaks the truth. That is a
2 verdict of guilt.

3 So, I'm going to ask, when you go back there to
4 deliberate and find this man, Micah Brown, guilty of two
5 counts of murder -- Jasmine Richardson and Brennan Montgomery
6 -- and find him guilty of almost killing Taurus Williams, with
7 that intent that he wanted him to die -- of attempted murder.
8 I ask you this, and that's what the evidence demands. Thank
9 you.

10 THE COURT: Thank you.

11 Any closing argument by the defense?

12 (No response.)

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14 THE COURT: All right. Thank you.

15 All right. Thank you. Ladies and gentlemen of the jury,
16 you have heard all of the evidence, the arguments of the
17 parties, and now it is my responsibility to charge you as to
18 the law in this case. I remind you that, during this trial,
19 you and I have certain duties to perform.

20 As the trial judge, it is my responsibility to preside
21 over the trial of this case, and I also have the duty to rule
22 on the admissibility of evidence offered during this trial.
23 You are to consider only the competent evidence before you.
24 If there was -- if there was any testimony ordered stricken
25 from the record in this case during this trial, you must

1 disregard that testimony. You are to consider only the
2 testimony which has been presented from this witness stand and
3 any exhibits which have been made a part of the record in this
4 case and any stipulations of counsel.

5 I have the additional duty to charge you the law
6 applicable to this case. As a presiding judge, I am the sole
7 judge of the law of this case, and it is your duty as jurors
8 to accept and apply the law as I now state it to you.

9 If you already have any idea as to what the law is or
10 what the law ought to be and it does not agree with what I now
11 tell you the law is, you must abandon this idea because you
12 are sworn to accept the law and apply the law exactly as I
13 state it to you.

14 In every case tried in this court before a jury, the jury
15 becomes the sole and exclusive judge of the facts in a case.
16 A trial judge cannot comment on or state or make any statement
17 to a trial jury about the facts in this case. Since you, the
18 jury, are the sole judges of the facts in this case, you are
19 not to infer from what I have said during the progress of this
20 trial, in ruling upon the admissibility of evidence or
21 otherwise or anything that I say now during the course of this
22 instruction to you, that I have any opinion about the facts in
23 this case. The law does not allow me to have an opinion about
24 the facts in this case. This is a matter solely for you, the
25 jury, to determine.

1 As jurors, it is your duty to determine the effect,
2 value, weight, and truth of the evidence presented during this
3 trial. You must not consider evidence -- you must not
4 consider as evidence any statement of counsel made during the
5 trial. Statements of counsel do not constitute evidence;
6 rather, counsel is articulating the position and the
7 contention of their client. This rule applies to the opening
8 statement of counsel and the closing argument.

9 Next, we'll talk about the types of evidence. There are
10 two types of evidence which are generally presented during a
11 trial: direct evidence and circumstantial evidence. Direct
12 evidence directly proves the existence of a fact and does not
13 require deduction. Circumstantial evidence is a proof of a
14 chain of facts and circumstances indicating the existence of a
15 fact.

16 Crimes may be proven by circumstantial evidence. The law
17 makes no distinction between the weight or value to be given
18 to either direct or circumstantial evidence; however, to the
19 extent that the State relies on circumstantial evidence, these
20 circumstances must be consistent with each other and, when
21 taken together, point conclusively to the guilt of the accused
22 beyond a reasonable doubt. If these circumstances merely
23 portray the defendant's behavior as suspicious, the proof has
24 failed.

25 The State has the burden of proving the defendant guilty

1 beyond a reasonable doubt. The burden rests with the State,
2 regardless of whether the State relies on direct evidence,
3 circumstantial evidence, or some combination of the two.

4 Necessarily, you must determine the credibility of
5 witnesses who have testified in this case. Credibility simply
6 means believability. It becomes your duty as jurors to
7 analyze and to evaluate the evidence and determine which
8 evidence convinces you of its truth.

9 In determining the believability of witnesses who have
10 testified in this case, you may believe one witness over
11 several witnesses or several witnesses over one witness. You
12 may believe a part of the testimony of a witness and reject
13 the remaining part of the testimony of that same witness. You
14 may believe the testimony of a witness in its entirety or
15 reject the testimony of a witness in its entirety. You may
16 consider whether any witness has exhibited to you any
17 interest, bias, prejudice, or other motive in this case. You
18 may also consider the appearance and manner of a witness while
19 on the witness stand and whether the testimony of the witness
20 was corroborated and made stronger by other testimony and
21 evidence, or was it made weaker and impeached by other
22 testimony and evidence presented.

23 As I told you earlier in the trial, the rules of evidence
24 ordinarily do not permit witnesses to testify to opinions or
25 conclusions. An exception to this rule exists for witnesses

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1 we call expert witnesses. A witness by -- who, by education
2 and experience, has become an expert in some art, science,
3 profession, or calling may state an opinion as to relevant and
4 material matter in which the witness claims to be an expert
5 and may also state the reasons for the opinion.

6 You should consider an expert opinion received in
7 evidence in this case, and like any other evidence, give it
8 the weight you think it deserves. If you decide that the
9 opinion of an expert witness is not based on sufficient
10 education and experience, or if you conclude that the reasons
11 given in support of the opinion are not sound or that the
12 opinion is outweighed by other evidence, you may disregard the
13 opinion entirely.

14 An expert witness's testimony is to be given no greater
15 weight than that of other witnesses simply because the witness
16 is an expert. Further, you are not required to accept an
17 expert's opinion, even though it is not contradicted.

18 Ladies and gentlemen of the jury, as I stated to you at
19 the beginning of the trial, the defendant in this case is
20 charged with three indictments. The first indictment, count
21 one, is for murder, the second is for murder, and the third is
22 for attempted murder. The indictments charge three separate
23 and distinct offenses. You must decide each charge separately
24 on the evidence and the law applicable to it, uninfluenced by
25 your decision as to any other charge.

1 The defendant may be convicted or acquitted on any or all
2 of the offenses charged. You'll be asked to write a separate
3 verdict of guilty or not guilty for each charge.

4 Ladies and gentlemen of the jury, as I told you on the
5 first day, the indictments charge the defendant with two
6 counts of murder and one count of attempted murder. I remind
7 you that the fact that the defendant was arrested, charged,
8 and indicted in this case is not evidence in this case and
9 cannot be considered by you as evidence of guilt in this case,
10 nor does it create any presumption or inference of guilt. The
11 document is simply the formal written instrument which
12 contains the charge made against the defendant. It is the
13 formal document by which this case is brought into court.

14 Ladies and gentlemen of the jury, the defendant in this
15 case has pled not guilty to these indictments, and that puts
16 the burden on the State to prove the defendant guilty. A
17 person charged with committing a criminal offense in South
18 Carolina is never required to prove himself innocent.

19 I charge you that it is an important rule of law that the
20 defendant in a criminal trial, no matter what the seriousness
21 of the charge may be, will always be presumed to be innocent
22 of the crime for which the indictment was issued unless guilt
23 has been proven by evidence satisfying you of the guilt beyond
24 a reasonable doubt.

25 The presumption of innocence does not end when you begin

1 your deliberations, but it accompanies the defendant
2 throughout the trial until or unless you reach a verdict of
3 guilt based on evidence satisfying you of that guilt beyond a
4 reasonable doubt. The presumption of innocence is like a robe
5 of righteousness placed about the shoulders of the defendant,
6 which remains with the defendant until it has been stripped by
7 evidence satisfying you of the defendant's guilt beyond a
8 reasonable doubt.

9 The presumption of innocence is not a mere legal theory.
10 It is not just a legal phrase. It is a substantial right to
11 which every defendant is entitled unless you, the jury, are
12 satisfied from the evidence of the defendant's guilt beyond a
13 reasonable doubt.

14 What is reasonable doubt in the law? A reasonable doubt
15 is the kind of doubt that would cause a reasonable person to
16 hesitate to act. The State has the burden of proving the
17 defendant guilty beyond a reasonable doubt. Some of you may
18 have served as jurors in civil cases where you were told that
19 it is only necessary to prove that a fact is more likely true
20 -- might be more true than not true, such as by the greater
21 weight or the preponderance of the evidence. In criminal
22 cases, the State's proof must be more powerful than that. It
23 must be beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is proof that leaves you
25 firmly convinced of the defendant's guilt. There are very few

1 things in this world that we know with absolute certainty, and
2 in criminal cases, the law does not require proof that
3 overcomes every possible doubt. If convinced that the
4 defendant is guilty of the crime charged, you must find the
5 defendant guilty. If, on the other hand, you think that there
6 is a real possibility that the defendant is not guilty, you
7 must give the defendant the benefit of the doubt and find him
8 not guilty.

9 In order to establish criminal liability, criminal intent
10 is required. For example, the mental state required to be
11 proved by the State for a particular crime might be purpose,
12 intent, knowledge, recklessness, or criminal negligence.
13 Criminal intent must be proven by the State beyond a
14 reasonable doubt. Criminal intent is always a matter that you
15 must determine by the jury from the circumstances surrounding
16 the situation. There is no way to prove intent to a
17 mathematical certainty. There is no way medical science can
18 dissect a person's brain and determine what the person had in
19 mind. So, the law says that criminal intent may be inferred
20 from the circumstances shown to have existed.

21 This is how you make a determination of whether or not
22 the element requiring intent was present. It is not necessary
23 to establish intent by direct and positive evidence, but
24 intent may be established by inference in the same way as any
25 other fact, by taking into consideration the acts of the

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1 parties and all of the facts and circumstances of the case.

2 Criminal intent is a mental state, a conscious
3 wrongdoing. It is up to you to determine what the defendant
4 intended to do based on the circumstances shown to have
5 existed. Criminal intent can arise from action or a failure
6 to act. It may arise from negligence, recklessness, or an
7 indifference to the duty or the consequences that is
8 considered by the law to be the equivalent of criminal intent.

9 Ladies and gentlemen of the jury, the defendant in this
10 case is charged with two counts of murder. The State must
11 prove beyond a reasonable doubt that the defendant killed
12 another person with malice aforethought. Malice is hatred,
13 ill will, or hostility towards another person. It is the
14 intentional doing of a wrongful act without just cause or
15 excuse and within -- and with an intent to inflict an injury
16 or under circumstances that the law will infer an evil intent.

17 Malice aforethought does not require that malice exist
18 for any particular time before the act is committed, but
19 malice must exist in the mind of the defendant just before and
20 at the time of the act -- at the time the act is committed.
21 Therefore, there must be a combination of the previous evil
22 intent in the act.

23 Malice aforethought may be expressed or inferred. These
24 terms, "expressed" or "inferred," do not mean different kinds
25 of malice but merely the manner in which malice may be shown

1 to exist; that is, either by direct evidence or by inference
2 from the facts and circumstances which are proved.

3 Expressed malice is shown when a person speaks words
4 which express hatred or ill will for another or when the
5 person prepared beforehand to do the act which was later
6 accomplished. For example, lying in wait for a person or any
7 other acts of preparation, going to show that the deed was
8 within the defendant's mind would be expressed malice.

9 Malice may be inferred from conduct showing a total
10 disregard for human life. Malice may be inferred from the
11 facts and circumstances surrounding the case.

12 An intent is an effort to accomplish a crime which does
13 not succeed. An intent includes a specific intent to do a
14 particular criminal act, along with an act falling short of
15 the act intended. The State must show more than mere
16 preparation and intent. There must be some overt act
17 committed in the effort to commit the crime.

18 Intent means intending the result which was supposed to
19 occur, not accidentally or involuntary. Intent may be shown
20 in conduct -- shown by acts and conduct of the defendant.

21 Ladies and gentlemen of the jury, the defendant in this
22 case is also charged with attempted murder. In order to prove
23 this crime, the State must prove the defendant attempted to
24 kill another person with malice aforethought. Malice is
25 hatred, ill will, or hostility towards another person. It is

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1 the intentional doing of a wrongful act without just cause or
2 excuse and with an intent to inflict an injury. Malice
3 aforethought does not require that malice exists for any
4 particular time before the act is committed, but malice must
5 exist in the minds of the defendant just before and at the
6 time the act is committed; therefore, there must be a
7 combination of the previous evil intent and the act.

8 Malice aforethought may be, once again, expressed or
9 inferred. These terms, "expressed" and "inferred," do not
10 mean different kinds of malice but merely the manner in which
11 malice may be shown to exist; that is, either by direct
12 evidence or inference from the facts and circumstances which
13 are proved.

14 A specific intent to kill is an element of attempted
15 murder. Specific intent means intending a certain result to
16 actually occur, not accidentally or involuntary. Intent may
17 be shown by acts and conduct of the defendant. Evidence of
18 the character of the act, the character of the instrument
19 used, the manner in which it was used, the purpose of -- to be
20 accomplished, and the resulting wounds or injuries may be
21 considered in determining the intent with which the act was
22 committed. Intent may also be shown when it is demonstrated
23 that the defendant voluntarily and willfully commits an act,
24 the natural tendencies of which is to destroy another's life.

25 All right. If a crime -- next, we'll talk about "hand of

1 one, hand of all." If a crime is committed by two or more
2 people who are acting together in committing a crime, the act
3 of one is the act of all. A person who joins with another to
4 commit an unlawful act is criminally responsible for
5 everything done by the other person, which happens as a
6 probable or natural consequence of the acts done in carrying
7 out the common plan and purpose.

8 For example, two people can be guilty of killing another
9 person when only one of the two had a gun. There was only one
10 bullet and only one of the two fired the shot that caused the
11 death. If two or more people are together, acting together,
12 assisting each other in committing the offense, the act of one
13 is the act of all, or as it is sometimes said, "the hand of
14 one is the hand of all."

15 Prior knowledge that a crime is going to be committed
16 without more [verbatim] is not sufficient to make a person
17 guilty of that crime. Mere knowledge that another person is
18 going to commit a crime, even if the defendant is present when
19 the crime is committed, is not sufficient to convict the
20 defendant as a principal. You, as a principal, is shown by
21 actual or constructive presence at the scene as a result of
22 prior arrangement. Therefore, a finding of a prior arranged
23 plan or common scheme is necessary for a finding a guilt as a
24 principal. The State must prove beyond a reasonable doubt by
25 competent evidence the theory of the hand of one is the hand

1 of all.

2 A principal in a crime is one who either actually commits
3 the crime or who is present, aiding, abetting, or assisting in
4 committing a crime. When a person doesn't act in the presence
5 of and with the assistance of another, the act is done by
6 both. Where two or more acting with a common plan or intent
7 are present at the commission of a crime, it does not matter
8 who actually commits the crime; all are guilty. The hand of
9 one is the hand of all.

10 Present at the commission of the crime means to be
11 sufficiently near to aid and abet and assist in the commission
12 of the crime; however, mere presence at the scene of a crime
13 is not sufficient to convict one as a principal on the theory
14 of aiding and abetting.

15 Intent is also a necessary element, for there must have
16 been a common design or intent to commit the crime, and the
17 crime must have been committed pursuant thereto with the
18 person aiding and abetting by some overt act.

19 Intent means intending the result which actually occurs,
20 not accidentally or involuntary. Intent may be shown by acts
21 in the conduct of the defendant and other circumstances for
22 which you may naturally and reasonably infer intent. The
23 State must prove these elements beyond a reasonable doubt.

24 Ladies and gentlemen of the jury, I instruct you and
25 emphasize that the fact that the defendant did not testify is

1 not a factor to be considered by you in any way in your
2 deliberation and in your consideration of the question of
3 guilt or the innocence of the defendant. It must not be
4 considered by you in any manner whatsoever.

5 A defendant has a constitutional right to remain silent,
6 and the assertion of this right must not be considered by you
7 in your deliberations. I repeat: Under your oath, you are
8 not to draw -- you're not to draw any conclusion whatsoever
9 from the fact that the defendant in this case did not testify.
10 The fact that this defendant did not testify should not even
11 be discussed in the jury room.

12 The burden of proof, as I have stated to you, is on the
13 State. The defendant is not required to prove his innocence.
14 The burden of proof remains on the State to prove guilt beyond
15 a reasonable doubt.

16 The State and the defendant are entitled to the
17 individual opinion of each juror on the issues of fact in this
18 case. It is the duty of each of you to consider and weigh all
19 the evidence in the case and, from such evidence, to
20 determine, if you can, the question of guilt or innocence of
21 the defendant.

22 There is nothing particularly different in the way a jury
23 should consider the evidence in a criminal case from that in
24 which all reasonable persons treat any question depending upon
25 evidence presented to them.

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1 You're expected to use your good sense, consider the
2 evidence in the case for only the purpose for which it has
3 been admitted, and give it a reasonable and fair construction
4 in the light of your common knowledge of the natural
5 tendencies and inclinations of human beings.

6 Your verdict in this case will be one of two forms. If,
7 from the evidence and the law, you find that the defendant is
8 not guilty of the crimes charged, you will circle "not guilty"
9 on the verdict form that I will give you, and the foreperson
10 will sign his name.

11 If, on the other hand, you find that the defendant is
12 guilty based on the evidence and the law which you have heard,
13 you will circle "guilty" on the verdict form, and the
14 foreperson will sign their name. Your verdict must be
15 unanimous. It must be guilty or not guilty.

16 The law requires that a jury verdict be unanimous, which
17 means that all jurors must agree. The only two forms of the
18 verdict are guilty or not guilty. Once a jury reaches a
19 verdict of not guilty or guilty, circle the verdict on the
20 face of the verdict form and sign under the verdict to
21 signify, Mr. Foreman, that you -- what you have circled is the
22 verdict of all of the jurors. Then you will notify us by
23 knocking on the door that you have reached a verdict.

24 Mr. Foreman, I will give you a copy of these instructions
25 in written form. During your deliberations, you may refer to

1 the instructions to guide your decision making. You may --
2 you must consider the instructions as a whole and not follow
3 some and ignore others. You will need to return the
4 instructions once you have reached a verdict.

5 Mr. Foreman, what I have -- my law clerk has handed you
6 is the verdict form, and it reads: "In the State of South
7 Carolina, County of Richland, in the Court of General Sessions
8 of the Fifth Judicial Circuit, Indictment Nos.
9 2019-GS-40-1951, 1952, and 1953, the State of South Carolina
10 versus Micah Christian Brown, Defendant, Verdict Form."
11 Please circle the appropriate verdict below as to each
12 indictment and follow the accompanying instructions carefully.

13 The first one says -- question says: "As to the
14 indictment alleging murder of Brennan Montgomery, we, the
15 jury, unanimously find the defendant..." and you have "guilty"
16 there and "not guilty" there. You will circle the unanimous
17 verdict of the jury.

18 As to Question 2, it says: "As to the indictment
19 alleging murder of Jasmine Richardson, we, the jury,
20 unanimously find the defendant..." and you will circle
21 "guilty" or "not guilty."

22 And No. 3 says: "As to the indictment alleging attempted
23 murder of Taurus Williams, we, the jury, unanimously find the
24 defendant guilty or not guilty."

25 You will stop and end your deliberations. Mr. Foreman,

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1 you will sign and date the verdict form. At that point, you
2 will knock on the door and inform the bailiffs that you have
3 reached a verdict, and then we will receive you back in the
4 courtroom for the publication of your verdict.

5 Mr. Foreman, at this time, I am going to send you-all
6 back into the jury room. You cannot begin your deliberations
7 until you receive all of the evidence. So, we're going to
8 gather the evidence. The bailiffs are going to bring that to
9 you.

10 Once you receive the evidence, the jury charge, and the
11 verdict form, then you may begin your deliberations.

12 All right? Thank you.

13 And if you can hand that verdict form back to the
14 bailiff, we'll send it all back together.

15 (The jury exited the courtroom at 11:44 a.m.)

16 THE COURT: All right. Any objections or exceptions to
17 the jury charge?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: Any from the defense?

20 (No response.)

21 THE COURT: All right. I will mark the jury charge as
22 Court Exhibit -- is it 1?

23 (Court Exhibit No. 1, Jury Charge, was marked for
24 identification and received into the record.)

25 THE COURT: And the verdict form is here. If you-all can

1 check the evidence to make sure everything that is -- that has
2 been entered is there.

3 And, Mr. Sutherland, if you can just come up and watch as
4 standby, so -- since Mr. Brown can't come up.

5 And I am going to release the alternates. If you can
6 bring them out.

7 Let them look through the evidence, and then we'll bring
8 the alternates out, but you can go ahead and start pulling
9 them.

10 (Pause in the proceedings.)

11 THE COURT: So we don't need to bring them back. Yeah,
12 you can go ahead and take them down. I'm just going to
13 release the alternate.

14 MR. SCOTT: Verdict form and a copy of the charges?

15 THE COURT: Yes. The charge should be marked Court
16 Exhibit 1.

17 MR. SCOTT: Court's 1?

18 THE COURT: Well, I'll go ahead -- I'm going to release
19 the alternates right now, so you can just hold tight.

20 Do you have -- if they want to see the video --

21 MR. SCOTT: We sent back a laptop.

22 THE COURT: Okay. The clean one? Okay.

23 (Alternate jurors enter the courtroom at 11:51 a.m.)

24 THE COURT: Thank you. We have Juror 29 and 214; is that
25 correct?

1 JUROR: Yes.

2 THE COURT: All right. Thank you. You were selected as
3 our alternates, and as you can see, all 12 of our jurors have
4 returned, and so, therefore, we will no longer need your
5 service. I do want to thank you for your service this week
6 for participating in the trial -- participating in the trial.
7 And I've noticed that you have been attentive.

8 And so -- but on behalf of everyone here and on behalf of
9 the Court, I do want to thank you for serving as our
10 alternates. If you wish to hang around, just let the bailiffs
11 know, and we'll find -- you can come back and sit -- sit in
12 the audience, or if you wish to leave, you're more than
13 welcome to leave. If you want to hang around and see what the
14 jury comes back with, you can stay. If you want to leave, you
15 can leave.

16 But, once again, thank you all for being here.

17 (The alternates exited the courtroom at 11:51 a.m.)

18 THE COURT: All right. Anything else?

19 MR. SCOTT: Not from the State, Judge.

20 THE COURT: All right. Well, we will be at ease until
21 they -- we hear something back from the jury. If you're going
22 to leave out the courtroom, please give my law clerk your
23 phone number so, if I hear something, we can find you quickly.

24 All right. And you-all are going to take Mr. Brown back
25 downstairs? All right. So he can have lunch and -- while

1 he's waiting on the jury.

2 All right. Thank you.

3 (A recess was taken from 11:52 a.m. to 1:32 p.m., while
4 the jury deliberates.)

5 THE COURT: All right. It's my understanding that the
6 jury has reached a verdict. We're ready to bring them in.

7 Let me just say this: Once the jury comes back with the
8 verdict, please try to refrain from any outbursts. I do
9 understand that this is emotional, but once they come back
10 with a verdict, please try to refrain from any outbursts. If
11 you think you cannot control yourself, I'll ask that you step
12 out right now, and then we'll bring you back in. But at --
13 but we're going to bring the jury in, we're going to accept
14 the verdict, and then we'll see what they have and go from
15 there.

16 (The jury entered the courtroom at 1:33 p.m.)

17 THE BAILIFF: The jury is present, Judge.

18 THE COURT: All right. Thank you.

19 Mr. Foreman, it's my understanding that you -- the jury
20 has reached a verdict; is that correct?

21 MR. FOREMAN: We have, Your Honor.

22 THE COURT: And is that verdict unanimous?

23 MR. FOREMAN: It is, Your Honor.

24 THE COURT: All right. If you can pass the verdict form
25 to the clerk. Thank you. Or bailiff.

VERDICT

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1 All right. I'll ask the clerk to publish the verdict.

2 THE CLERK: Yes, Your Honor.

3 VERDICT

4 THE CLERK: State of South Carolina, County of Richland,
5 2019-GS-40-1951, Indictment No. 2019-GS-40-1952, Indictment
6 No. 2019-GS-40-1953, State of South Carolina versus Micah
7 Christian Brown, as to the indictment alleging murder of
8 Brennan Montgomery, we, the jury, unanimously find the
9 defendant guilty.

10 As the indictment alleging murder of Jasmine Richardson,
11 we, the jury, unanimously find the defendant guilty.

12 As to the indictment alleging attempted murder of Taurus
13 Williams, we, the jury, unanimously find the defendant guilty.

14 Signed No. 101, Foreperson, November the 9th, 2022.

15 Mr. Foreman, were these your verdicts and the verdicts of
16 the entire jury?

17 MR. FOREMAN: They were.

18 THE CLERK: Thank you.

19 THE COURT: All right. Thank you.

20 All right. Anything else from the jury before I release
21 them? Anything from the State?

22 MR. SCOTT: No, Your Honor.

23 THE COURT: Anything from the defense?

24 (No response.)

25 THE COURT: All right. Thank you, ladies and -- you may

1 be seated. You may be seated.

2 All right. Thank you, ladies and gentlemen of the jury.
3 I do want to thank you for being here this week and fulfilling
4 your civic duty and serving on the jury this week. As you can
5 see, there are matters that arise in this county and counties
6 all over the state -- actually all over the country -- in
7 which the lawyers cannot -- those matters cannot be resolved,
8 and that is when we must turn to 12 persons like yourself to
9 assist in this process, and so thank you for being here.

10 You are done for the week, and so, therefore, you do not
11 have to -- I think the clerk has paperwork for you. If you
12 need a work excuse, she has work excuses.

13 But I do want to thank you again on behalf of everyone
14 here for your service, and you are free to leave. And you are
15 free to talk to anybody you want to and do any research or
16 whatever else you want at this point.

17 Thank you. Have a good evening.

18 (The jury exited the courtroom at 1:37 p.m.)

19 THE COURT: All right. Thank you.

20 Anything else from the State?

21 MR. SCOTT: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. SUTHERLAND: He's remaining silent.

24 THE COURT: All right. He chooses to remain silent?

25 MR. SUTHERLAND: Yes, ma'am.

1 THE COURT: Okay. All right. So what I want to do is --
2 I will probably sentence him in the morning. I noticed that
3 his parents were here yesterday, so he'll have an opportunity
4 if they want to come.

5 MR. SUTHERLAND: And I'll turn his dad around, because he
6 was flying down here.

7 THE COURT: And so let's say 10:00 in the morning. I
8 don't think I have anything. We'll do sentencing at 10:00 in
9 the morning. Does that work?

10 MR. SUTHERLAND: Yes, Judge.

11 THE COURT: All right. Thank you.

12 And you'll have the paperwork for me in the morning,
13 Solicitor's office?

14 MR. SCOTT: We will, Your Honor.

15 THE COURT: All right. Thank you.

16 Let's just make sure the jury out. Make sure the jury's
17 out before they take him out. Make sure the jury's gone
18 before you -- yeah, because they are getting their paperwork
19 and stuff. And I'll give -- and I'll give whoever -- the
20 victims an opportunity to speak tomorrow, too, if they wish to
21 speak.

22 (At 1:39 p.m., the trial adjourns until November 8, 2022,
23 at 9:30 a.m.)

24 //

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1 NOVEMBER 8, 2022, at 10:27 a.m.

2 THE COURT: All right. Yes, sir?

3 MR. SCOTT: Thank you, Your Honor. We have heard three
4 days of testimony. You have seen the video. You have heard
5 from the co-defendant, heard from the facts in this case. I
6 was thinking about it, I have spent the last 17 years
7 prosecuting violent crimes all over the state really, and I
8 was trying to remember one that was as heinous as this and as
9 evil. I have seen people shot. I have seen people stabbed,
10 strangled, burnt alive, but the facts of this case are really
11 kind of bothersome. You know, to shoot into a car full of
12 defenseless people, who are supposedly your friends, to beat a
13 woman in the head with a pistol until the gun breaks and to
14 leave her on the side of the road in the dirt to die, what
15 they did to the victim who survived, to shoot him five times
16 and then try to finish him off with a metal rod, leaving all
17 three to die, walking home and then joking about it to a
18 girlfriend and smoking weed after you just took three lives
19 supposedly, I don't know that it gets any more evil than that.

20 And, you know, Your Honor, I don't typically ask for a
21 sentence. I usually leave it in the judge's discretion after
22 a homicide, but if this is not a life sentence, then I really
23 don't know what is. Two people dead. One who is running
24 every day of his life, thinking they're going to come after
25 him to finish the job. And for what? I mean, is he achieving

1 rank maybe? Is that what he was wanting to do? I don't
2 understand really, but I think this should be a message to
3 some of these gang-bangers here in this county that, you know,
4 there are consequences, and this is a life sentence, Your
5 Honor. If there ever was one, this is one.

6 Brennan Montgomery, no longer with us. Jasmine
7 Richardson, no longer with us. The living victim, like I
8 said, he's running every day of his life, waiting for somebody
9 to come finish out the job.

10 So -- but that's what the State would ask, Your Honor, is
11 life.

12 At the appropriate time, Brendan Montgomery's sister,
13 Brandi Montgomery, I think, wants to address the Court.
14 Jasmine Richardson's mother, Adinah Richardson, I think, at
15 the appropriate time, would like to address the Court as well.

16 THE COURT: All right. Thank you. I'll be glad to hear
17 from them.

18 Let's -- yeah, she'll need to speak into the microphone
19 and state her name.

20 MS. MONTGOMERY: Brandi Montgomery. B-r-a-n-d-i.

21 THE COURT: Yes, ma'am.

22 MS. MONTGOMERY: I don't think you-all know how it feels
23 to come home and your niece grab on your arm because this is
24 the last -- the closest thing she can get to her uncle
25 Brennan. A son, a brother, a nephew, a grandson, a cousin, a

1 friend, and a loved one was taken. Not only did Brennan and
2 Jasmine die on that night but a part of each and every one of
3 my family members died. I can't begin to express the amount
4 of pain and emptiness it feels without having Brennan on
5 earth.

6 He was a joke in the middle of a heavy moment. His smile
7 could brighten a room full of tears, and his heart -- his
8 heart is what got him here today. Brennan gave everybody a
9 chance, including the defendant.

10 My brother was left in the cold rain, grunting and
11 without air. He wasn't given an option to have enough breath
12 support to phone in any words, and the defendant's
13 willingness, chooses to come in this courtroom and not say a
14 word.

15 I hope one day, in the same courage that was had on
16 November 7th, will be put towards being honest and apologetic.

17 Judge, you will announce the sentence, but there's no
18 numerical digit that you could ever equate to the lives that
19 were taken on November 7th and how they were taken. My
20 brother is so much more than a number.

21 "It's done." I don't know who that was told to or who
22 you answer to, but answer to the man that sits high and looks
23 down on you. He told me that as well. So as long as I have
24 blood in my veins and air in my breath, Brennan Malik
25 Montgomery will forever live on.

1 THE COURT: Thank you, ma'am.

2 MS. RICHARDSON: Adinah Richardson. A-d-i-n-a-h.

3 THE COURT: Yes, ma'am.

4 MS. RICHARDSON: These last four years has been -- I
5 mean, just total chaos, pain. Imagine you're waking up in the
6 morning with the same pain that you went to sleep with the
7 night before. And the things -- what they don't know is what
8 we go through long-term. Okay? When everybody's gone and
9 you're just left there with your memories and pictures, it's
10 indescribable.

11 I myself have had numerous breakdowns. I have been
12 hospitalized. This has definitely been the worst that's
13 happened in my life. And I know my daughter -- my daughter
14 Jasmine, she loved Brennan. And he tormented her in more ways
15 that we could even think of because, for her to see her best
16 friend shot in the head, she probably couldn't even get away
17 because she was so hurt and didn't even know, you know, what
18 to do. That was her best friend in the world.

19 And, also, I just want to add, you know, like Brandy was
20 saying, I don't know who he answers to or if he even goes that
21 way, but the evil that he has portrayed upon these two lives
22 that do matter, like she said, there's no time you can put on
23 it. None. And everybody say, "Oh, you'll have closure." You
24 don't ever have closure because your loved ones are gone. But
25 it's bittersweet because you know you got to have justice, and

1 you don't want to re-live it all over again, but it was all
2 worth it. And I want to thank you-all.

3 THE COURT: Thank you, ma'am.

4 All right. Anything else from the State?

5 MR. SCOTT: No, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. SUTHERLAND: No, ma'am.

8 THE COURT: All right. Thank you, Ms. Montgomery and
9 Ms. Richardson, for your comments today. Thank you all for
10 being here this week. I know that it has not been easy to
11 have to sit here and listen to the intimate details of what
12 happened to your loved ones, and I just want you to know that
13 you have the condolences of the Court and will keep you-all in
14 prayer. All right?

15 SENTENCING

16 THE COURT: All right. Mr. Micah Christian Brown, on
17 Indictments 2019-GS-40-1952 and 1953, that is two counts of
18 murder, sir, you'll be sentenced to the State Department of
19 Corrections for life in prison without parole.

20 And on Indictment 2019-GS-40 -1951, you'll be sentenced
21 to the State Department of Corrections for 30 years.

22 All sentences will run concurrent.

23 Thank you. All right? Thank you.

24 (The defendant exits the courtroom at 10:39 a.m.)

25 THE COURT: All right. Thank you. May God bless

1 you-all.

2 (The above trial concluded at 10:39 a.m.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: State v. Micah Christian Sylve Brown

3 2019-GS-40-01951 to 53

4 DATE OF HEARING: 11/7 to 11/10/2022

5 COURT REPORTER/MONITOR: DCRP/Renee Sexton

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

14
15 16
17 /s/ Bobbi Fisher

18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: February 17, 2023

20
21
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

The State of South Carolina,)

Indictment Number:

2019A4010200138-189

Warrant Number:

2019A4011200852

2018A4010300099-100

vs.)

ORDER

Micha Brown
Defendant

CHARGE(S): Murder (2 counts), Att. Murder, Burglary 1st degree, P.C.

THIS MATTER COMES BEFORE THE COURT on September 9, 2019 Present
at the hearing were Tracy Pinnick, representing the Defendant; and

ex Parte, representing the State.

The following motions were presented:

Motion to Relieve Counsel

☐ Attached pertinent documents were submitted by the State/Defendant and were made a part of the record.

The Court determined: Motion granted re defendants request. The Public Defenders office is relieved and the defendant shall be appointed an Attorney from the appointment list.

IT IS SO ORDERED

L. Ashley Manning
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

This

day of

20

9 Sept 19

Delany, Joanna

From: Harris, Elizabeth B. <EHarris@sccourts.org>
Sent: Friday, June 9, 2023 1:49 PM
To: White, Della
Cc: Delany, Joanna; Warren, Kaylynn; Transcripts
Subject: [External] Re: Please expedite this request.

Dear Ms. White:

It is with sincere regret that I must inform you that the hearing held on 09/09/2019 in Richland County cannot be transcribed. I experienced a catastrophic failure of an external hard drive, and that audio recording no longer exists. Unfortunately, no one ordered the transcript.

Sincerely,
 Elizabeth B. Harris, CVR-M-CM
 Official Court Reporter
 Fifth Judicial Circuit

From: White, Della <dwhite@sccid.sc.gov>
Sent: Tuesday, June 6, 2023 2:39 PM
To: Harris, Elizabeth B. <EHarris@sccourts.org>
Cc: Delany, Joanna <jdelany@sccid.sc.gov>; Warren, Kaylynn <kwarren@sccid.sc.gov>; Transcripts <transcripts@sccourts.org>
Subject: Please expedite this request.

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good afternoon,

Attached is a letter requesting the transcript for the above case. **Please expedite this request.**

If you are not the court reporter or if another court reporter took a portion of the trial, please let me know.

As a reminder, please do not include keyword indexing and bond or preliminary hearings.

Finally, if there are any co-defendants, please let me know.

Thank you very much.

Della White
 South Carolina Commission on Indigent Defense
 1330 Lady Street
 Columbia, South Carolina 29201

This communication and any attachment thereto is intended only for use by the addressee(s) named herein, and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, utilization, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error please notify the Commission on Indigent Defense immediately and permanently delete the original and any copy of any e-mail and any printout thereof. SCCID may be reached by using the email address of the sender, or at 803-734-1343.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**WITNESSES**

(S) Shannon D Kleynenberg  
- Richland County Sheriff Dept

**ARREST WARRANT NUMBER**

**2018A4010300100**

**ACTION OF GRAND JURY**

**TRUE BILL**

*Edna P. L.*

Foreperson of Grand Jury  
Date:

APR 17 2019

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2019GS4001953**

**The State of South Carolina**

**County of**

**Richland**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2019**

**67**

**THE STATE  
vs.**

**Micah Christian Sylve Brown**

**Indictment for  
MURDER / MURDER**

SC Code: 16-03-0010  
CDR Code: 0116

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.

308

App. 308

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

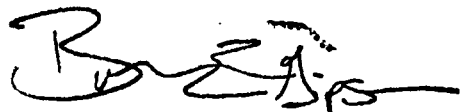
**INDICTMENT**

At a Court of General Sessions, convened on April 16, 2019, the  
 Grand Jurors of Richland County present upon their oath:

**MURDER**

That Micah Christian Sylve Brown did in Richland County, on or  
 about November 7, 2018, kill the victim, Jasmine Richardson, with malice  
 aforethought, either express or implied, by means of blunt force trauma,  
 and the victim did die as a proximate result thereof. All in violation of  
 Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



BYRON E. GIPSON, SOLICITOR

**WITNESSES**

**(S) Shannon D Kleynenberg**  
– Richland County Sheriff Dept

**ARREST WARRANT NUMBER**

**2018A4010300099**

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury

Date:

**APR 17 2019**

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2019GS4001952**

**The State of South Carolina**

**County of**

**Richland**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2019**

**67**

**THE STATE**

**vs.**

**Micah Christian Sylve Brown**

**Indictment for**  
**MURDER / MURDER**

SC Code: **16-03-0010**

CDR Code: **0116**

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.

310

App.310

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**INDICTMENT**

At a Court of General Sessions, convened on April 16, 2019, the  
Grand Jurors of Richland County present upon their oath:

**MURDER**

That Micah Christian Sylve Brown did in Richland County, on or  
about November 7, 2018, kill the victim, Brannan Montgomery, with malice  
aforethought, either express or implied, by means of gun shot, and the  
victim did die as a proximate result thereof. All in violation of Section 16-  
03-0010, S. C. Code of Laws, 1976, as amended.

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



---

BYRON E. GIPSON, SOLICITOR

**WITNESSES**

**(S) Kevin T Loftis**

**- Richland County Sheriff Dept**

**ARREST WARRANT NUMBER**

**2018A4011200832**

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury  
Date:

**APR 18 2019**

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2019GS4001951**

**The State of South Carolina**

**County of**

**Richland**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2019**

**67**

**THE STATE  
vs.**

**Micah Christian Sylve Brown**

**Indictment for  
ATTEMPTED MURDER**

**SC Code: 16-03-0029  
CDR Code: 3410**

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 )  
COUNTY OF RICHLAND )

**INDICTMENT**

At a Court of General Sessions, convened on April 16, 2019, the  
Grand Jurors of Richland County present upon their oath:

**ATTEMPTED MURDER**

That Micah Christian Sylve Brown did in Richland County on or  
about November 7, 2018, did with the intent to kill, attempt to kill Taurus  
Williams with malice aforethought, either expressed or implied. All in  
violation of SC Code of Laws § 16-3-29 (1976, as amended).

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

  
BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 19-GS-40-1953AW#: 2018A4010300100Date of Offense: November 7, 2018S.C. Code §: 16-03-0010CDR Code #: 0116

## SENTENCE SHEET

AKA: Micah Christian Syne Brown

Race: \_\_\_\_\_

Sex: \_\_\_\_\_

Age: \_\_\_\_\_

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL#\* \_\_\_\_\_

SID# \_\_\_\_\_

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MurderIn violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor [Signature]SC Bar # 73081

Defendant \_\_\_\_\_

Attorney for Defendant \_\_\_\_\_

SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of Life days/months/years/Time Served ☐ Youthful Offender Act not to exceed \_\_\_\_\_ years

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

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

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc. \_\_\_\_\_ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

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



STATE VS. Micha Christian Sylva Brown INDICTMENT/CASE#: 19 -GS- 40 - 1953

## SPECIAL CONDITIONS:

☐ PTUP after \_\_\_\_\_ months/years

## And Other Terms Listed Below:

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

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

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

Payment Terms: \_\_\_\_\_ ☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

## \*Fine:

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

Clerk of Court/Deputy Clerk: \_\_\_\_\_  
Court Reporter: \_\_\_\_\_Leannette W. McBride  
DCRBPresiding Judge: \_\_\_\_\_  
Judge Code: \_\_\_\_\_  
Sentence Date: \_\_\_\_\_hvj  
2161  
11-10-22

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Micah Christian Sylve Brown

AKA:

Race: B Sex: M Age: \_\_\_\_\_

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL#\* \_\_\_\_\_ SID# \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 19-GS-401952AW#: 2018A4010300099Date of Offense: November 7, 2018S.C. Code §: 16-03-0010CDR Code #: 0116

## SENTENCE SHEET

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MurderIn violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 73081

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of Life days/months/years/Time Served ☐ Youthful Offender Act not to exceed \_\_\_\_\_ years

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

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

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOP. \_\_\_\_\_ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

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

STATE VS. Micah Christian Sylva Brown INDICTMENT/CASE#: 19 -GS- 40 - 1952

## SPECIAL CONDITIONS:

☐ PTUP after \_\_\_\_\_ months/years

## And Other Terms Listed Below:

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

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

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

Payment Terms: \_\_\_\_\_ ☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

## \*Fine:

| Fine may be pd. in equal consecutive weekly/monthly pmts. of              | \$ _____ | Beginning | \$ _____       |
|---------------------------------------------------------------------------|----------|-----------|----------------|
| §14-1-206 (Assessments 107.5%)                                            |          |           | \$ _____       |
| §14-1-211 (A)(1)(Conv. Surcharge)                                         |          | \$100     | \$ <u>100</u>  |
| §14-1-211 (A)(2)(DUI Surcharge)                                           |          | \$100     | \$ _____       |
| §56-5-2995 (DUI Assessment)                                               |          | \$12      | \$ _____       |
| §56-1-286 (DUI Breath Test)                                               |          | \$25      | \$ _____       |
| §14-1-212 (Law Enforce. Funding)                                          |          | \$25      | \$ <u>25</u>   |
| §14-1-213 (Drug Court Surcharge)                                          |          | \$150     | \$ _____       |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) |          | \$41      | \$ _____       |
| §50-21-114 (BUI Breath Test Fee)                                          |          | \$50      | \$ _____       |
| §56-5-2942(J) (Vehicle Assessment)                                        |          | \$40/ea   | \$ _____       |
| 3% to County (if paid in installments)                                    |          | TBD       | \$ <u>3.75</u> |

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender FundTOTAL \$ 128.75Clerk of Court/Deputy Clerk: Jeannette W. McBride  
Court Reporter: DERPPresiding Judge: hvj  
Judge Code: 2161  
Sentence Date: 11-10-22

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Micah Christian Sylve Brown

AKA: \_\_\_\_\_

Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL#\* \_\_\_\_\_ SID# \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 19-GS-401951AW#: 2018A4011200832Date of Offense: November 7, 2018S.C. Code §: 16-03-0029CDR Code #: 3410

## SENTENCE SHEET

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Attempted MurderIn violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 73081 Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed \_\_\_\_\_ years

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

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

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

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. \_\_\_\_\_ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

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

STATE VS. \_\_\_\_\_ INDICTMENT/CASE#: \_\_\_\_\_ -GS- \_\_\_\_\_ - \_\_\_\_\_

**SPECIAL CONDITIONS:**☐ **PTUP** after \_\_\_\_\_ months/years**And Other Terms Listed Below:**

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

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

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

Payment Terms: \_\_\_\_\_ ☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

**\*Fine:**

|                                                                           | \$      | Beginning | \$     |
|---------------------------------------------------------------------------|---------|-----------|--------|
| Fine may be pd. in equal consecutive weekly/monthly pmts. of              | \$      |           |        |
| §14-1-206 (Assessments 107.5%)                                            |         |           | \$     |
| §14-1-211 (A)(1)(Conv. Surcharge)                                         | \$100   |           | \$ 100 |
| §14-1-211 (A)(2)(DUI Surcharge)                                           | \$100   |           | \$     |
| §56-5-2995 (DUI Assessment)                                               | \$12    |           | \$     |
| §56-1-286 (DUI Breath Test)                                               | \$25    |           | \$     |
| §14-1-212 (Law Enforce. Funding)                                          | \$25    |           | \$ 25  |
| §14-1-213 (Drug Court Surcharge)                                          | \$150   |           | \$     |
| §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs) | \$41    |           | \$     |
| §50-21-114 (BUI Breath Test Fee)                                          | \$50    |           | \$     |
| §56-5-2942(J) (Vehicle Assessment)                                        | \$40/ea |           | \$     |
| 3% to County (if paid in installments)                                    | TBD     |           | \$ 375 |

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

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

TOTAL \$ 128.75

 Clerk of Court/Deputy Clerk: \_\_\_\_\_  
 Court Reporter: \_\_\_\_\_

 Jeannette W. McBride  
 DERO

 Presiding Judge: \_\_\_\_\_  
 Judge Code: \_\_\_\_\_  
 Sentence Date: \_\_\_\_\_

11-10-22

## CERTIFICATE OF COUNSEL FOR APPELLANT

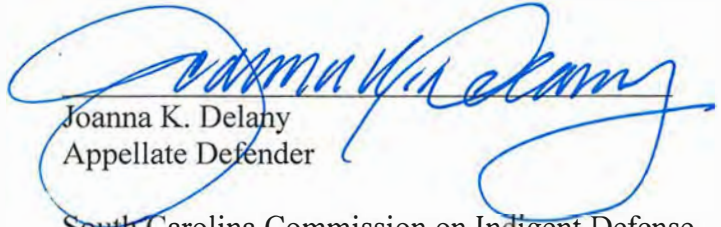
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised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

Respectfully Submitted,

**RECEIVED**

**Nov 13 2023**

**SC Court of Appeals**



Joanna K. Delany  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 13th day of November, 2023.

**RECEIVED**

**Nov 13 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

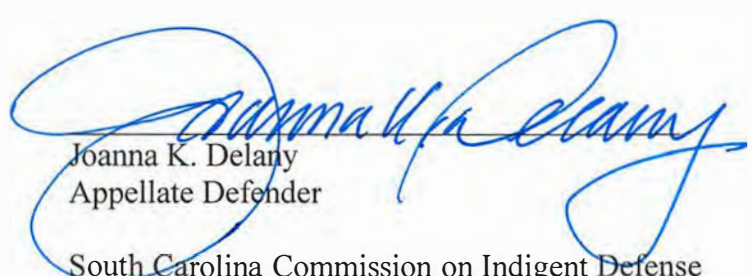
APPELLATE CASE NO. 2022-001605

---

CERTIFICATE OF SERVICE

---

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Julianna E. Battenfield, Esquire, at the primary email address listed in the Attorney Information System (AIS), this 13th day of November, 2023.



Joanna K. Delany  
Appellate Defender

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

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**Subject:** 2022-001605 The State v. Micah Christian Sylve Brown  
**Date:** Monday, November 13, 2023 9:16:00 AM  
**Attachments:** [2022-001605 The State v. Micah Christian Sylve Brown Record on Appeal.pdf](#)  
[2022-001605 The State v. Micah Christian Sylve Brown Proposed Transportation Order.pdf](#)

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Good Morning Ms. Battenfield,

Please find attached for service in the above-referenced case the Record on Appeal and a proposed transportation order. These will be filed with the Court of Appeals today, November 13, via email filing.

Thank you!

**Sara McInnis**

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**Nov 29 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001605

---

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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### **STATEMENT OF ISSUE ON APPEAL**

Whether the court erred where it denied Mr. Brown counsel in his trial for murder and attempted murder, where Mr. Brown did not waive his right to counsel by affirmative request or by misconduct, since an accused has the fundamental right to counsel?

## **STATEMENT OF THE CASE**

During the April term of 2019, a Richland County Grand Jury indicted Micah Brown, the appellant, for two counts of murder and one count of attempted murder.<sup>1</sup>

On September 19, 2019, Mr. Brown appeared before the Honorable Casey Manning for an ex parte motion to relieve his counsel, Tracy Pinnock. The court granted the motion.<sup>2</sup>

On July 11, 2022, Mr. Brown appeared before the Honorable Clifton Newman for an ex parte motion to relieve his counsel, Judah VanSyckel. The court took the matter under advisement. On August 15, 2022, Mr. Brown reappeared before the Honorable Clifton Newman and the court granted the motion to relieve counsel. On October 14, 2022, Mr. Brown reappeared before the Honorable Clifton Newman for a status conference. Mr. Brown was not represented by counsel. Dale Scott represented the State. The court appointed Tivis Sutherland as standby counsel for Appellant.<sup>3</sup>

Appellant was tried before the Honorable DeAndrea Benjamin and a jury, from November 7 – 10, 2022. Mr. Brown appeared pro se, with Tivis Sutherland as standby counsel. Dale Scott prosecuted the case. Mr. Brown was convicted as indicted, and he was sentenced to serve

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<sup>1</sup> R. 308.

<sup>2</sup> It is undisputed the judge granted the motion. However, the court reporter “experienced a catastrophic failure of an external hard drive” and could not produce a transcript. Upon information and belief, undersigned counsel believes it was a very short hearing wherein Judge Manning granted the motion. The court’s order relieving Ms. Pinnock is located at p. 305 of the Record on Appeal. The court reporter’s email regarding the equipment failure is located at pp. 306-307 of the Record on Appeal.

<sup>3</sup> R. 1; R. 3, l. 1 – 5, l. 9; R. 32, ll. 2-18; R. 34; R. 36, ll. 7-22; R. 45, ll. 11-15; R. 47; R. 49, 4-15; R. 50, ll. 22-25.

concurrent terms of life without the possibility of parole for each count of murder, and thirty years for attempted murder.<sup>4</sup>

This appeal follows.

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<sup>4</sup> R. 53; R. 302, ll. 16-21; R. 314.



### **STANDARD OF REVIEW**

“Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo.” *State v. Samuel*, 422 S.C. 596, 813 S.E.2d 487, 490 (2018). “[A]ppellate courts review questions of law de novo, with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 194, 810 S.E.2d 836, 847 (2018). *See also United States v. Legree*, 205 F.3d 724, 729 (4th Cir. 2000) (review of alleged denial of due process in failing to appoint counsel is de novo).

## **ARGUMENT**

### **I.**

The court erred where it denied Mr. Brown counsel in his trial for murder and attempted murder, where Mr. Brown did not waive his right to counsel by affirmative request or by misconduct, since an accused has the fundamental right to counsel.

#### **A. Introduction**

Mr. Brown did not voluntarily waive his right to counsel—the court’s decision that he would represent himself at trial was made over his repeated objection. Although the court stated that Mr. Brown appeared “difficult to get along with,” he did not commit misconduct. *See State v. Boykin*, 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996). He did not threaten or assault anyone. His requests were timely, and they were not dilatory. Mr. Brown had reasons for requesting substitute counsel. In particular, Mr. Brown had a legitimate complaint that counsel seemed insistent that he take a fifty-year plea offer, despite his right to a trial. Mr. Brown wanted a lawyer who was willing to try his case. The court did not find Mr. Brown had engaged in any misconduct, and instead it arbitrarily ruled that he waived his right to counsel by moving to relieve two attorneys over the course of four years: “I don’t go past two lawyers.”

The court’s offer to appoint substitute counsel several months later, on the morning of trial, was not a substantial offer of assistance of counsel. Mr. Brown’s rejection of this offer, in an attempt to protect his rights, did not waive his right to counsel. *See Powell v. Alabama*, 287 U.S. 45 (1932). Mr. Brown was forced to go to trial without counsel in a murder case. This error requires reversal. *See United States v. Cronin*, 466 U.S. 648, 658 (1984); *Chapman v. California*, 318 U.S. 18, 23 n. 8 (1967).

## **B. Relevant facts**

Mr. Brown was charged with two counts of murder and one count of attempted murder. The charges arose from events that occurred on November 7, 2018. Mr. Brown was arrested within two days.<sup>5</sup> He was entitled to have a trial on the charges. He was also entitled to counsel, and to the effective assistance of counsel. He was entitled to discovery. Counsel was obliged to abide by Mr. Brown's decision as to the plea to be entered. *See* U.S. CONST. amend. VI; U.S. CONST. amend. XIV; *Cronic*, 466 U.S. at 653; Rule 5, SCRCrimP; *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Strickland v. Washington*, 466 U.S. 668, 686 (1984); Rule 1.2, RPC, Rule 407, SCACR.

On September 9, 2019, Mr. Brown appeared before the Honorable L. Casey Manning for a motion to relieve his appointed counsel, Tracy Pinnock. Mr. Brown would later explain he was unhappy with Ms. Pinnock's representation because he had not received discovery thirty days after a motion to compel was granted. The court granted the motion to relieve counsel, and Judah VanSyckel was appointed.<sup>6</sup>

Several years later, on July 11, 2022, Mr. Brown appeared in front of the Honorable Clifton Newman for a motion to relieve his appointed counsel, Judah VanSyckel (counsel). At that point, trial was scheduled for October 31, 2022—over three and a half months away. Mr. Brown said he had attempted to have this motion heard “a year ago.” Mr. Brown had complaints about counsel's performance. Of note, Mr. Brown was disquieted by counsel's seeming insistence that he take a fifty-year plea offer. “[Y]ou're telling me to take a plea of 50 years. He say I'll be 70 when I come

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<sup>5</sup> R. 308; R. 91, ll. 2-17.

<sup>6</sup> R. 11, ll. 14-23; R. 5, l. 16 – 6, l. 2; R. 305.

home and that's good." Mr Brown explained he did not ask for a plea offer and stated his position was that he was not guilty.<sup>7</sup>

Mr. Brown also expressed concern that counsel's behavior was dilatory. In particular, he was alarmed by counsel's remarks to him that counsel believed it was in Mr. Brown's interest if counsel sat on his "A-S-S" for a while, instead of trying to move the case forward. "[H]e even told me . . . I know I've been sitting on my, quote, A-S-S but sitting on my A-S-S is helping you. So you ain't doing nothing for me at all." "[M]y case is not a case where you're supposed to sit on your behind."<sup>8</sup>

Counsel told the court, "I certainly think that this is a tough case. There are statements by the victim of the alleged murder that . . . could be used to cross-examine [Mr. Brown] and I think that he would look bad." Counsel stated that Mr. Brown's rejection of a fifty-year plea offer had made his representation "extraordinarily difficult." "I had to beg for the offer that I was able to get . . ." Counsel claimed Mr. Brown said he would take twenty or thirty years for voluntary manslaughter and so counsel did not want to do anything that "spurs the court to go and put the case on a docket." However, there had never been an offer of voluntary manslaughter and the case was four years old.<sup>9</sup>

Counsel further stated he hired an investigator who, along with counsel, encouraged Mr. Brown to plead guilty: "[W]e encouraged him to plead." Counsel said he and the investigator told Mr. Brown, "[W]e've worked out an offer for you that's not life." Counsel told the court there had

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<sup>7</sup> R. 1; R. 4, ll. 3-6; R. 5, ll. 15-17; R. 14, ll. 23-25; R. 22, ll. 19-23; R. 28, ll. 19-24.

<sup>8</sup> R. 10, 10-15; R. 15, ll. 13-14.

<sup>9</sup> R. 7, l. 24 – 8, l. 22.

been a “breakdown” in his relationship with Mr. Brown. During one meeting with Mr. Brown: “I was repeatedly called a pussy ass.”<sup>10</sup>

As the hearing went on, Mr. Brown understood the court to be encouraging him to accept the plea offer. “[H]e said he worked out a plea for you, so he didn’t have to do all the stuff you’re saying that he needed to do to be ready for a trial.” The court stated that if the prosecution proved its case,

... you’re lucky not to get life ... you have like a 75 percent chance of getting life. So he’s working, trying to get you something less than that, you should be thanking him for trying to save you. You can’t—

THE DEFENDANT: Fifty years?

THE COURT: Pardon?

THE DEFENDANT: Are you trying to convince me to do 50 years?

THE COURT: I’m just having a conversation because it’s solely up to you. Chances are I’ll be your judge on October 31st. And we’ll be sitting and witness after witness and the jury will say whether guilty or not guilty. And if you’re guilty, you get a sentence.<sup>11</sup>

At another point in the hearing, the following exchange occurred.

THE DEFENDANT: I ain’t taking 50 years either. I’m not signing something in blood.

THE COURT: You don’t have to take 50 years. You have the right to a jury trial?

THE DEFENDANT: Yeah.

THE COURT: And then if you’re found guilty, it won’t be what you take, it will be what the judge gives you. If the judge says life, that’s it.<sup>12</sup>

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<sup>10</sup> R. 9, l. 1; R. 17, l. 18 – 18, l. 12; R. 26, ll. 4-8.

<sup>11</sup> R. 28, ll. 9-11; R. 20, l. 15 – 21, l. 1. 8.

<sup>12</sup> R. 18, ll. 13-20.

However, the court also stated that Appellant could have a jury trial, and if the jury found him not guilty, he would be free to go.<sup>13</sup>

The court expressed an unwillingness to appoint successive counsel. “I don’t appoint lawyer after lawyer after lawyer . . . he can’t pick and choose saying I like this lawyer, I don’t like that one, I want this one, I don’t want that one.” **“I don’t go past two lawyers.”** “I don’t just name lawyer after lawyer after lawyer because I’m convinced that no one can satisfy you. That’s why you’re in the situation you’re in because you’re difficult to deal with and you’re under a lot of pressure. You’re under a lot of stress.”<sup>14</sup>

The court also stated that if it relieved counsel, Mr. Brown would likely have to represent himself. THE COURT: “If I let him go, if I let you relieve him, then you won’t have a lawyer because I’m not going to appoint another one because if you can’t get along with Pinnock and you can’t get along with VanSyckel, then you won’t be able to get along with another one either.” THE DEFENDANT: “I probably would, you never know until you try it.”<sup>15</sup>

The court asked Mr. Brown whom he wanted appointed. “[Y]ou can tell you’re difficult to get along with, don’t you think?” Mr. Brown eventually named two public defenders. However, the court noted one of them was retiring, and an intern in the courtroom said the other one was moving home to Seattle. The court asked, “Who else you want?” and Mr. Brown replied, “Whoever you put me with.”<sup>16</sup>

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<sup>13</sup> R. 15, ll. 1-4; R. 15, ll. 1-4.

<sup>14</sup> R. 9, ll. 4-10; R. 20, ll. 3-4 (emphasis added); R. 26, ll. 13-17.

<sup>15</sup> R. 21, l. 23 – 22, l. 4.

<sup>16</sup> R. 23, ll. 5-8 (emphasis added); R. 24, l. 12 – 25, l. 19.

The court again stated that if it relieved counsel, then Mr. Brown “might have to handle this one yourself.” THE COURT: “You have a Constitutional right to represent yourself.” THE DEFENDANT: “I can’t handle it myself. I can’t . . . I ain’t want no plea.” The court stated it would reconvene the hearing at a later date.<sup>17</sup>

The hearing reconvened on August 15, 2022. Mr. Brown again asked counsel be relieved. The court stated, “You can represent yourself. You don’t have a right to pick and choose. You’ve been given how many lawyers now?” “You have not convinced me of any legitimate reason why he should be removed other than that’s what you want.”<sup>18</sup>

Mr. Brown again repeated his complaints, in conjunction with which, Mr. Brown stated for the first and only time during any of the proceedings, that he would rather represent himself than take the plea offer. The court again stated that if it relieved counsel, Mr. Brown would have to represent himself. Counsel stated that when he went to meet with Mr. Brown after the last hearing, Mr. Brown did not want to meet with him. Mr. Brown again asked to have counsel relieved.<sup>19</sup>

The court ruled that counsel was relieved, Mr. Brown would represent himself, and that standby counsel would be appointed. Mr. Brown repeated that he did not want to represent himself.<sup>20</sup>

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<sup>17</sup> R. 30, l. 7-13; R. 31, ll. 12-13.

<sup>18</sup> R. 34; R. 37, l. 3 – 38, l. 1.

<sup>19</sup> R. 38, l. 2 – 43, l. 18.

<sup>20</sup> R. 45, 11-18.

Two months later, on October 14, 2022, Mr. Brown and the solicitor appeared before the court for a status conference. The solicitor stated that he wanted to “make sure that everybody is on the same page that you will proceed November 7th with Mr. Brown representing himself on these charges.” Mr. Brown stated, “It wasn’t my decision to go pro se . . . When I come in here doing pro se, I’m not saying not a word. I’m not capable of representing myself, so y’all have to do what y’all have to do.”<sup>21</sup>

The court stated that it would appoint Tivis Sutherland to serve as standby counsel. The court further stated, “Mr. Brown has been advised of the dangers of self-representation. He did not want to have a lawyer that was provided to him, so he has to represent himself.”<sup>22</sup>

The trial convened on November 10, 2022, in front of the Honorable DeAndrea Benjamin and a jury. The court asked Mr. Brown if it was correct that he wished to represent himself. Mr. Brown stated: “Well, Your Honor, no offense, but I was forced to represent myself. But I don’t know his name, so I’m not trippin’, but I’m just going to exercise my right to remain silent. I’m just not going to say anything from this point forward.” However, the court and Mr. Brown engaged in a colloquy about his right to counsel.<sup>23</sup>

The court confirmed that Tivis Sutherland had been appointed as standby counsel, and Mr. Sutherland explained that he had met with Mr. Brown on the Thursday prior to trial, and had gotten the discovery the following day. Mr. Sutherland stated that he offered to represent Mr. Brown but

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<sup>21</sup> R. 47; R. 49, l. 4 – 50, l. 4.

<sup>22</sup> R. 50, l. 5 – 51, l. 3.

<sup>23</sup> R. 53; R. 61, ll. 4-10.



Mr. Brown declined. The court told Mr. Brown that he had the right to an attorney and that the court was willing to appoint Mr. Sutherland to represent him.<sup>24</sup>

THE COURT: . . . we haven't started the trial . . . if you wish to have Mr. Sutherland represent you, I can appoint him to represent you. But my understanding is, is that you do not wish for him to represent you; is that correct?

THE DEFENDANT: I mean, I don't know the man, Your Honor. Like I say, no offense, I just—I really ain't got nothing to say to him if I ain't allowed.

THE COURT: All right. So you wish to represent yourself?

THE DEFENDANT: No. I was forced to represent myself. It's just what's going on.

THE COURT: All right. Well, but you have—Judge Newman—you had two previous attorneys, and Mr. Sutherland has agreed to represent you, but you do not wish for him to represent you; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. And, sir. You understand self-representation can be dangerous, and you have the right to have the assistance of a lawyer at all stages of the proceeding? You understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, you understand that criminal defense is a highly specialized and technical area of law. You understand that?

THE DEFENDANT: Yes, ma'am. **I just feel like, since I don't know him—he ain't been on my case too long or nothing like that, so I just don't—there's no way that can happen like that.**<sup>25</sup>

The court continued its colloquy with Mr. Brown, and explained that Mr. Sutherland was an experienced, trained criminal defense attorney while Mr. Brown was not. Mr. Brown and Mr. Sutherland were permitted to briefly confer off the record. When proceedings resumed, Mr. Brown

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<sup>24</sup> R. 61, l. 24 – 62, l. 15.

<sup>25</sup> R. 61, l. 11 – 64, l. 1 (emphasis added).

stated, “Like I say, Your Honor, I just really don’t have nothing to say, Your Honor. I ain’t going to lie. I just don’t want to talk.”<sup>26</sup>

THE COURT: So you’re going to represent yourself.

THE DEFENDANT: I’m going to exercise my right to remain silent.

THE COURT: All right. Well, I guess, do you want me to appoint Mr. Sutherland as your attorney?

THE DEFENDANT: I’m going to exercise my right to remain silent, Your Honor. Nobody speaking or nothing like that.<sup>27</sup>

The colloquy continued, with the court advising Mr. Brown of the dangers and disadvantages of self-representation, and the consequences of conviction. Mr. Brown reiterated that he did not wish to represent himself but desired to remain silent. The court again offered to appoint Mr. Sutherland.<sup>28</sup>

THE COURT: . . . If you don’t wish to represent yourself, I’ll appoint Mr. Sutherland to represent you, and you’re going to still remain silent because he’ll do all the talking. If—but you keep telling me you don’t want Mr. Sutherland to represent you.

THE DEFENDANT: I just don’t—I ain’t really—can’t really say too much, I just want to save my right to remain silent. I’m going to remain silent. I ain’t trying to disrespect you or nothing like that. I just ain’t really got nothing to say.

THE COURT: So, do you want me to appoint Mr. Sutherland or not?

THE DEFENDANT: I ain’t got nothing to say.<sup>29</sup>

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<sup>26</sup> R. 64, l. 2 – 65, l. 9.

<sup>27</sup> R. 65, ll. 10-16.

<sup>28</sup> R. 65, l. 17 – 67, l. 16.

<sup>29</sup> R. 66, l. 18 – 67, l. 5.

The court stated, “Mr. Sutherland is there as standby counsel to assist you with procedural. He cannot give you any advice but he can assist you procedurally as to how things work.” The court ruled, “[I]t appears that the defendant is going to represent himself. I’ve offered to appoint Mr. Sutherland, and it’s my understanding he does not want Mr. Sutherland appointed, and so, therefore, I do find that he has a constitutional right to proceed without an attorney, and so we will proceed without an attorney.”<sup>30</sup>

### **C. Discussion**

#### **i. Mr. Brown was entitled to the assistance of counsel.**

The Sixth Amendment right to counsel is a fundamental right made obligatory on the states by the Fourteenth Amendment. *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963). “An accused’s right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases ‘are necessities, not luxuries.’” *United States v. Cronin*, 466 U.S. at 653 (quoting *Gideon*, 372 U.S. at 344). “Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be ‘of little avail,’ as this Court has recognized repeatedly.” *Id.*, 466 U.S. at 653-54 (quoting *Powell v. Alabama*, 287 U.S. at 53).

“Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.” *Id.*, 466 U.S. at 654. “Unless the accused receives the effective assistance of counsel, ‘a serious risk of injustice infects the trial itself.’” *Cronin*, 466 U.S. at 656 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980)). Mr. Brown had a fundamental right to counsel. Forcing him to represent himself at trial for two counts of murder and one count of attempted murder was error.

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<sup>30</sup> R. 68, ll. 8-11; R. 69, ll. 15-20.

**ii. Mr. Brown did not waive his right to counsel by affirmative request or by misconduct. The court's failure to appoint substitute counsel was arbitrary.**

The courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). “Courts have recognized three ways in which a defendant may relinquish his right to counsel. First, a defendant may waive his Sixth Amendment right to counsel. A waiver is an intentional and voluntary relinquishment of a known right.” *State v. Boykin*, 324 S.C. at 556, 478 S.E.2d at 690 (citing *United States v. Goldberg*, 67 F.3d 1092, 1099 (3d Cir. 1995)). See *Faretta v. California*, 422 U.S. 806, 835 (1975) (defendant must be informed of the dangers and disadvantages of self-representation, or record must show he had sufficient background to appreciate them before he waives his right to counsel); *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990) (for a knowing and intelligent waiver to occur, defendant must be advised of right to counsel and adequately warned of dangers of self-representation).

Mr. Brown never asked to proceed pro se. The only time he stated he would proceed pro se was, as seen, when he stated he would rather represent himself than plead guilty.<sup>31</sup> He did not affirmatively request to represent himself. See *Osbey v. State*, 425 S.C. 615, 620, 825 S.E.2d 48, 51 (2019) (*Faretta* applies to any waiver, whether by affirmative verbal request or by conduct).

“A defendant may also waive his waive his right to counsel through his conduct. Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a ‘waiver by conduct.’” *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691 (cleaned up) (quoting *Goldberg*, 67 F.3d at 1100). “Most courts have held there

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<sup>31</sup> R. 38, ll. 4-18.

can be no ‘waiver by conduct’ unless the defendant is first warned of the consequences of his actions.” *Id. Faretta* warnings apply to waiver by conduct. *Osbey*, 425 S.C. at 620, 825 S.E.2d at 51. “Finally, some courts have held a defendant may forfeit his Sixth Amendment right to counsel. Forfeiture results in the loss of the right regardless of the defendant’s knowledge of either the consequences of his actions or the dangers of self-representation.” *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691 (citing *Goldberg, supra*) (footnote omitted).<sup>32</sup>

Mr. Brown did ask to represent himself, and he did not commit misconduct such that he waived his right to counsel (or forfeited it, if that doctrine were to be recognized in this state). He did not attempt to delay or fail to appear for court, and he was indigent. *See State v. Fairey*, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007) (finding defendant engaged in deliberate and dilatory conduct sufficient to waive his right to counsel by conduct where he failed to appear for trial, failed to pay his retained attorney, failed to cooperate with his public defender, and he engaged in delay tactics such as moving throughout the country, making motions to continue the case, and failing to sign and return acknowledgements); *State v. Cain*, 277 S.C. 210, 284 S.E.2d 779 (1981) (waiver of right to counsel is inferable from defendant’s failure to fulfill conditions of his appearance bond and fact he neglected to keep in contact with his attorney).

*State v. Gill*, 355 S.C. 234, 241-45, 584 S.E.2d 432, 436-38 (Ct. App. 2003) (waiver of counsel may be inferred from actions of defendant who did not qualify for public defender, where

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<sup>32</sup> “[B]ecause of the drastic nature of the sanction, forfeiture would appear to require extremely dilatory conduct. On the other hand, a ‘waiver by conduct’ could be based on conduct less severe than that sufficient to warrant a forfeiture.” *Boykin*, 32 S.C. at 556, 478 S.E.2d at 691. “While a number of courts have recognized the existence of forfeiture of right to counsel, only two courts have held a defendant’s conduct serious enough to warrant a forfeiture, particularly in the absence of any prior warning by the court.” *Id.* “[W]e need not decide whether South Carolina should embrace the doctrine of forfeiture . . .” *Id.*, 324 S.C. at 558, 478 S.E.2d at 692.

defendant repeatedly assured trial judge he could hire an attorney but failed to do so, failed to appear for court and was tried after he was picked up on a bench warrant, and where he had been allowed a reasonable time to hire counsel); *State v. Jacobs*, 271 S.C. 126, 128, 245 S.E2d 606, 608 (1978) (non-indigent defendant waived his right to counsel where court urged him to retain counsel, he was given additional time to retain counsel, and on day of trial could not name his attorney or indicate when counsel would be available). *Cf. Morris v. Slappy*, 461 U.S. 1, 13-14 (1983) (holding there is no Sixth Amendment right to a meaningful attorney-client relationship, and trial judge did not err by denying mid-trial continuance motion since court could have concluded defendant's requests to be represented by his prior attorney "were not made in good faith but were a transparent ploy for delay").

Nor did Mr. Brown did seek to raise frivolous defenses or abuse the court process. *Cf. State v. Samuel*, 422 S.C. at 606, 813 S.E.2d at 493 ("In most cases where a court has found a defendant to be manipulative, the defendant was clearly attempting to dispense with counsel in order to make impermissible arguments or raise invalid defenses at trial—in effect, to 'beat the system'—rather than to waive the benefits of counsel."); *United States v. Moore*, 706 F.2d 538, 539 (5th Cir. 1983) (defendant's dismissal of four appointed attorneys and several of their law partners for frivolous reasons—that one was a former prosecutor, that another had formerly worked for the Internal Revenue Service—with the last dismissal coming four days before trial, was functional equivalent of voluntary and knowing waiver of right to counsel).

Mr. Brown did not harm, assault, or threaten anyone. Nor did he attempt to sow disorder. *See United States v. Jennings*, 855 F. Supp. 1427, 1445 (M.D. Pa. 1994), *aff'd*, 61 F.3d 897 (3d Cir. 1995) (indigent defendant who, without provocation or justification, physically assaults court-appointed counsel, thereby waives right to appointed counsel); *United States v. McLeod*, 53 F.3d

322, 323-26 (1995) (in trial for retaliating against a witness, defendant's conduct forfeited his right to counsel where he was abusive and threatened to harm counsel, repeatedly threatened to sue counsel, and asked counsel to engage in unethical conduct); *Commonwealth v. Means*, 907 N.E.2d 646, 658 (Mass. 2009) ("The acts leading to waiver by conduct need not be violent, but they must be highly disruptive of orderly or safe court proceedings.").

The hearing (July 11, 2022) took place several months before the scheduled trial date (October 31, 2022). This was not a morning-of-trial attempt to delay. Had substitute counsel been appointed when counsel was relieved on August 15, 2022, he or she would have had two and a half months to prepare for trial. Mr. Brown expressed a legitimate complaint that counsel seemingly insisted he plead guilty to murder when he did not want to plead guilty to murder. *See Cronin*, 466 U.S. at 656, n. 19 (even when no theory of defense is available, once the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond a reasonable doubt); Rule 1.2, RPC, Rule 407, SCACR (lawyer shall abide by client's decision, after consultation with lawyer, as to plea to be entered). Counsel did not identify any reason to think a favorable plea offer would be made. It was undisputed Mr. Brown unequivocally rejected the fifty-year plea offer that was extended.

Mr. Brown's complaint that counsel stated he was sitting on his "A-S-S" in a four-year-old murder case also appears legitimate, although this may have been due to miscommunication based on an unfortunate choice of words. *See* Rule 3.2, RPC, Rule 407, SCACR (lawyer shall make reasonable efforts to expedite litigation consistent with interests of client). The court should have

relieved counsel and appointed new counsel. Courts should indulge every reasonable presumption against waiver of fundamental constitutional rights. *Johnson v. Zerbst*, 304 U.S. at 464.<sup>33</sup>

The court did not identify any misconduct by Mr. Brown that would support a finding of waiver of counsel by conduct, although the court noted Mr. Brown appeared “difficult to get along with.” Instead, a fair reading of the record shows the judge offered his opinion to Mr. Brown that he should plead guilty. The judge told Mr. Brown that “[c]hances are” he would be the trial judge, that if the State proved its case Mr. Brown had a “seventy-five percent chance of getting life,” and “[i]f the judge says life, that’s it.” The judge told Mr. Brown he should thank counsel for getting him a fifty-year plea offer, and that Mr. Brown would have to represent himself if he wanted counsel to be relieved.<sup>34</sup>

The court should not have made these improper remarks that were contrary to law. *See State v. Pierce*, 289 S.C. 430, 434, 346 S.E.2d 707, 710 (1986) (overruled on other grounds by *State v. Torrance*, 305 S.C. 45, 406 S.E.2d 315 (1991) (reversal required where judge stated that although he would instruct jury they could not hold it against the defendant if he chose not to testify, “they are human beings and you know and I know that any twelve people who have been called upon to resolve some dispute cannot help but have it in their mind and wonder why he did not tell us his side of it,” since these comments were “erroneous, improper and contrary to South Carolina law”); *State v. Crisp*, 362 S.C. 412, 415-26, 608 S.E.2d 429, 432 (2005) (reversed due to judge’s comments to defendant regarding his waiver of right to jury trial, that potential jurors could

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<sup>33</sup> As seen, the transcript of the motion to relieve Ms. Pinnock could not be obtained. However, Mr. Brown would later testify he was unhappy with Ms. Pinnock because he had not received discovery thirty days after a motion to compel was granted. R. 5, l. 14 – 6, l. 2; R. 11, ll. 14-23. Mr. Brown was entitled to view discovery in his case. *See* Rule 5, SCRCrimP; *Brady v. Maryland*, 373 U.S. at 87.

<sup>34</sup> R. 20, l. 11 – 23, l. 8.



“testify under oath that they are for the death penalty when they’re not,” since the comments “were fundamentally erroneous and constitute prejudicial error”).

*State v. Owens*, 362 S.C. 175, 178, 607 S.E.2d 78, 80 (2004) (“Although the trial court must strive to ensure that a criminal defendant’s waiver of the right of a jury trial is knowing and voluntary, the court should never inject its personal opinion into that decision. The comments here impermissibly did so.”); *State v. Jenkins*, 436 S.C. 362, 375, 872 S.E.2d 620, 627 (2022) (“while discussing with a defendant a choice the defendant must make about a constitutional right, the trial court may not make an inaccurate statement of law nor inject its personal opinion into the defendant’s analysis”). Mr. Brown had the right to make the decision of whether to go to trial or plead guilty free of any influence or coercion from the motions judge. He had not committed misconduct. The court’s failure to appoint substitute counsel when it relieved his counsel was arbitrary and improper: “I don’t go past two lawyers.” U.S. CONST. amend. VI; U.S. CONST. amend. XIV; *see United States v. Meeks*, 987 F.2d 575, 579 (9th Cir. 1993) (court erred in denying defendant’s motion to substitute counsel while at same time granting attorney’s motion to withdraw—by doing so, it waived defendant’s right to counsel for him, leaving him without representation).

**iii. The court’s finding that Mr. Brown wished to proceed pro se, based on his rejection of the court’s morning-of-trial offer to appoint substitute counsel, was error.**

Mr. Brown’s refusal of the trial judge’s offer to appoint standby counsel as his lawyer on the morning of trial did not effect a waiver of his right to counsel, since it was not a substantial offer of counsel. A fair reading of this record shows that Mr. Brown was legitimately concerned standby counsel had not had enough time to prepare for trial in this double murder and attempted

murder trial.<sup>35</sup> Mr. Brown’s repeated statements that he wanted to remain silent also indicate that he wanted to protect his constitutional rights, but he did not know how to do so.

The trial judge engaged in a *Faretta* colloquy with Mr. Brown. As seen, Mr. Brown stated he did not wish to represent himself. Yet the trial court found that he was entitled to proceed pro se.<sup>36</sup> This was error, since Mr. Brown did not affirmatively request to represent himself. “The most common method of waiving a right is by an affirmative, verbal request.” *State v. Boykin*, 324 S.C. at 556, 478 S.E.2d at 690 (citing *Goldberg*, 67 F.3d at 1099). “The Supreme Court has held that a waiver of the right to counsel must be knowing, voluntary, and intelligent.” *Id.* (citing *Johnson v. Zerbst*, 304 U.S. at 465). “The defendant must be informed on the record of the dangers and disadvantages of self-representation, or the record must indicate the defendant had sufficient background to understand the disadvantages of self-representation before he waives the right to counsel.” *Id.* (citing *Faretta v. California*, 422 U.S. at 835).

Mr. Brown’s refusal of counsel appointed on the morning of trial (Monday), who had first met with him four days before (Thursday), and gotten the discovery three days before (Friday), was legitimate. The chance that any counsel appointed the morning of a double murder and attempted murder trial could provide effective representation was so remote that this was not a fair offer. *See State v. Reed*, 332 S.C. 35, 44, 503 S.E.2d 747, 751 (1998) (court did not err by denying defendant’s request to have standby counsel represent him on eve of sentencing phase—court was faced with allowing standby counsel to step in and cross-examine witnesses on less than twenty-four hours preparation); *Cronic*, 466 U.S. at 659-60 (Adversary process is presumptively unreliable when “although counsel is available to assist the accused during trial, the likelihood that

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<sup>35</sup> R. 63, l. 23 – 64, l. 1.

<sup>36</sup> R. 69, ll. 15-20.

any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.”).

*Powell v. Alabama* is instructive. In *Powell*, 287 U.S. at 53, no lawyer had been named or definitely designated to represent the defendants until the morning of trial. “[S]uch designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard.” “[D]uring perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself.” *Id.*, 287 U.S. at 57.

The Supreme Court decried the trial of defendants who “were thus put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them.” *Id.*, 287 U.S. at 58. The duty of the court, pursuant to the Sixth and Fourteenth Amendments, to assign counsel, “is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.” *Id.*, 287 U.S. at 65. Absent an opportunity to prepare the case, morning-of-trial appointment of counsel in this murder case would have still left Mr. Brown with an inherently unfair trial, as he would not have been “accorded the right of counsel in any substantial sense.” *Id.*, 287 U.S. at 58.

**iv. The appointment of standby counsel did not satisfy the guarantee of counsel.**

The appointment of standby counsel was insufficient to fulfill Mr. Brown’s constitutional right to counsel. The appointment was problematic on these facts, as it provided a veneer of

propriety without conferring concrete protections.<sup>37</sup> *Cf. Powell v. Alabama*, 287 U.S. at 56 (“this action of the trial judge in respect of appointment of counsel was little more than an expansive gesture, imposing no substantial or definite obligation upon any one”).

The practical duties of standby counsel seem to vary from courtroom to courtroom, despite the fact that hybrid representation is not permitted in South Carolina.<sup>38</sup> A comparison of the following cases illustrates the inconsistent manner in which standby counsel is employed in this state. *See State v. Sanders*, 269 S.C. 215, 217, 237 S.E.2d 53, 54 (1977) (public defenders acted as accused’s “standby counsel and advisors”—“judge permitted Sanders to have the advice and assistance of two Public Defenders while he represented himself.”); *State v. Porter*, 389 S.C. 27, 38, n. 7, 698 S.E.2d 237, 243 (Ct. App. 2010) (“neither Porter nor his standby counsel moved to be admitted to any bench conferences either before or during the trial”); *State v. Giles*, 407 S.C. 14, 17, 754 S.E.2d 261, 262 (2014) (standby counsel made argument to trial judge on behalf of defendant); *State v. Campen*, 321 S.C. 505, 508, 469 S.E.2d 619, 621 (Ct. App. 1996) (overruled by *State v. Lewis*, 328 S.C. 273, 494 S.E.2d 115 (1997)) (“Campen’s standby counsel sat with him throughout the trial, made motions on his behalf, and advised him on several occasions”); *State v.*

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<sup>37</sup> It is unclear, for example, the extent to which standby counsel owes a pro se defendant ethical duties. “[T]here is considerable confusion among both judges and defense counsel concerning the ethical obligations of and limitations on standby counsel.” Peter A. Joy & Kevin C. McMunigal, *Ethical Responsibilities of Standby Counsel*, *Crim. Just.*, Summer 2021, at 49. *See also* ABA Formal Op. 07-448 (2007).

<sup>38</sup> *See State v. Rivera*, 402 S.C. 225, 239, 741 S.E.2d 694, 701 (2013) (there is no constitutional right to hybrid representation at trial or on appeal); *McKaskle v. Wiggins*, 465 U.S. 168, 184 (1984) (standby counsel may “steer a defendant through the basic procedures of trial;” may “relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the defendant in overcoming routine obstacles”); *Faretta v. California*, 422 U.S. at 834 n. 46 (State may, even over objection of accused, appoint standby counsel “to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant’s self-representation is necessary.”).

*Reed*, 332 S.C. at 43, 503 S.E.2d at 751 (trial court “allowed counsel to sit beside appellant as standby counsel and aid appellant to the extent he desired”).

In this case, the court ruled that “standby counsel [is here] to assist you with procedural. He cannot give you any advice but he can assist you procedurally as to how things work.”<sup>39</sup> Standby counsel, who was not Mr. Brown’s advocate and could not advise him on substantive matters, was an insufficient bulwark against the State in this murder trial, and Mr. Brown was left without counsel as guaranteed by the Sixth and Fourteenth Amendments.

**v. Mr. Brown is entitled to a new trial as a matter of law.**

The denial of counsel entitles Mr. Brown to a new trial. “The erroneous deprivation of a defendant’s fundamental right to the assistance of counsel is *per se* reversible error.” *State v. Boykin*, 324 S.C. at 555, 478 S.E.2d at 690 (citing *Chapman v. California*, 386 U.S. at 23 n. 8). “[T]here are some constitutional rights so basic to a fair trial that their infractions can never be treated as harmless error.” This includes the right to counsel. *Chapman*, 386 U.S. at 23. “[A] trial is unfair if the accused is denied counsel at a critical stage of his trial.” *Cronic*, 466 U.S. at 659.

Some errors “defy analysis by harmless-error standards because they affect the framework within which the trial proceeds, and are not simply an error in the trial process itself.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 149-50 (2006) (cleaned up) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991)). “Such errors include the denial of counsel[.]” *Id.* (citing *Gideon v. Wainwright*, 372 U.S. at 345). “Refusing to permit a defendant to receive the assistance of any counsel is the epitome of fundamental unfairness[.]” *Gonzalez-Lopez*, 548 U.S. at 159. (Alito, J., dissenting). *See also Holloway v. Arkansas*, 435 U.S. 475, 489 (1978).

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<sup>39</sup> R. 68, ll. 8-11.

Mr. Brown was erroneously denied the fundamental right to counsel in his trial for murder and attempted murder. This was a structural error which requires reversal. *Gideon*, 372 U.S. at 344; *Chapman*, 386 U.S. at 23 n. 8.

### CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.

  
Joanna K. Delany  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 29th day of November, 2023.

**RECEIVED**

**Nov 29 2023**

**SC Court of Appeals**

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

November 29, 2023



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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001605

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Julianna E. Battenfield, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 29th day of November, 2023.



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**Date:** Wednesday, November 29, 2023 11:28:00 AM  
**Attachments:** [State v. Micah Christian Sylve Brown 2022-001605 Final Brief of Appellant.pdf](#)

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Good Morning Ms. Battenfield,

Please find attached for service in the above-referenced case the Final Brief of Appellant, which will be filed with the Court of Appeals today, November 29, via email filing.

Thank you!

**Sara McInnis**

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Oct 31 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Honorable DeAndrea G. Benjamin, Circuit Court Judge

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Appellate Case No. 2022-001605

THE STATE, .....RESPONDENT,

v.

MICAH CHRISTIAN SYLVE BROWN, .....APPELLANT.

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**AMENDED FINAL BRIEF OF RESPONDENT**

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### **APPELLANT’S STATEMENT OF ISSUE ON APPEAL**

Whether the court erred where it denied Mr. Brown counsel in his trial for murder and attempted murder, where Mr. Brown did not waive his right to counsel by affirmative request or by misconduct, since an accused has the fundamental right to counsel?

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### **RESPONDENT’S COUNTERSTATEMENT OF ISSUE ON APPEAL**

Whether trial judges in this state have discretion to cut off the supply of free-of-charge attorneys at some point, or whether trial judges must provide defendants as many appointed attorneys as they wish because of the Sixth and Fourteenth Amendment right to counsel?

## STATEMENT OF THE CASE

Appellant Micah Brown was indicted at the 2019 term of the Grand Jury for Richland County for two counts of murder and one count of attempted murder. (2019-GS-40-01952, -01953, and -01951). Attorney Tracy Pinnock was originally appointed to represent Appellant, but Appellant moved to relieve her, and The Honorable Casey Manning granted his request.<sup>1</sup> Attorney Judah VanSyckel was then appointed from the list of Rule 608, SCACR, contract attorneys commissioned with Richland County Indigent Defense to represent Appellant, but Appellant also moved to relieve him as well, and after multiple hearings before the Honorable Clifton Newman on July 11, 2022, August 15, 2022, and October 14, 2022, Judge Newman granted his request as well. Standby counsel Tivis Sutherland was appointed to sit with Appellant at his trial to counsel him on any procedural matters that may arise after Appellant declined Judge Benjamin's and Mr. Sutherland's offers to appoint Mr. Sutherland to full representation. Nov. 7-10, 2022 Tr. The case was prosecuted by Deputy Solicitor Dale Scott. Nov. 7-10, 2022 Tr. 1.

Appellant proceeded to trial by jury *pro se* from November 7-10, 2022, after which he was found guilty as charged. Nov. 7-10, 2022 R. 295. He was sentenced by the Honorable DeAndrea G. Benjamin to two concurrent terms of life imprisonment without parole for the two murders and 30 years' concurrent for the attempted murder. Nov. 7-10, 2022 R. 302. Appellant timely filed a notice of intent to appeal his convictions and sentences and subsequently submitted a Brief in support of his Appeal. This Brief of Respondent follows.

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<sup>1</sup> See Designation of Matter Item # 3, Court Reporter's Email dated June 9, 2023. This email explains why no transcript of the initial hearing to relieve Ms. Pinnock exists. *See also* Designation of Matter Item # 2, September 19, 2019 Order Relieving Counsel.



## STATEMENT OF FACTS

It was rainy on the night of Wednesday, November 7, 2018. 21-year-old Choatte Neal (co-defendant tried separately) called Taurus Williams<sup>2</sup> (the attempted murder victim) who he frequently paid to drive him around and asked him to take him to Appellant Micah Brown's house to buy weed and pick up some money around 8:00 P.M. Taurus picked up Choatte and they along with Jasmine Richardson (murder victim) and Brennan Montgomery (the other murder victim) drove 40 minutes to Hopkins, S.C. to the place where Appellant lived with his father. Once there, Appellant unusually told the group, "We got to go down the street to my people's house and get [the weed and money]." Appellant directed Taurus through two minutes of directions to 1300 Whispering Pines Road in Richland County. It was a remote dirt road. Nov. 7-10, 2022 R. 126-131, R. 235-238, R. 240; State's Exhibit 65 (aerial photo of the area).

Appellant had climbed into the middle back seat, so Choatte—sitting to the left of him—got out of the car to let him out. Appellant got out too then immediately turned and opened fire on Jasmine (front passenger), Brennan (sitting behind her), and Taurus (the driver). Jasmine got out and started running to the little park on the street, but Appellant chased her down and started beating her with his pistol, but then when it broke, his hands. Brennan sustained gunshot wounds inside the car but fell out fully to the ground after Choatte opened the car door to check on him. Taurus attempted to drive the now-empty Kia Forte away, but he wrecked it into some big rocks 150 to 200 yards down Whispering Pines Road. Appellant dragged Jasmine across the road to a tree line where he left her there in the dark. R. 154, R. 198, R. 239, R. 242-246.

Appellant and Choatte then walked the more than half a mile up a hill to his house at 708 Sharpe Road. Appellant's father Sylvester Brown thought it was unusual they came in the back

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<sup>2</sup> Taurus Williams was subpoenaed to testify at trial but did not appear and Judge Benjamin issued a bench warrant for him. He was not located. Nov. 7-10, 2022 R. 265-266.

door, and he eventually gave Choatte (who Sylvester described as a very tall, light-skinned, and lanky young man) orange juice as he was acting like he was having a panic attack. Appellant asked to borrow his father's phone to locate his own phone with the Find My Phone app. Sylvester offered to give Appellant and Neal a ride but Appellant declined, and the two young men walked the more than half mile back to the crime scene in the rain. Nov. 7-10, 2022 R. 132-139, R. 198-199, R. 228, R. 246-248.

Appellant and Choatte came to 1300 Whispering Pines Road where they noticed that Taurus had dragged himself down the dirt road up onto the porch of the house. Appellant told Choatte, "Bro, you got to help me kill him." Choatte resisted, but eventually complied with Appellant's demand. The two found a metal rod in the yard and began to beat Taurus with it for quite some time, and only left after they thought he was dead. Appellant and Choatte then walked back up the hill to Appellant and his father's house where Appellant eventually told two people who had come over, "Yo, I just killed two people." Nov. 7-10, 2022 R. 247-248, R. 250.

Dorasha Swain, the owner of the 1300 Whispering Pines house, saw Appellant and Choatte beating Taurus on her front porch security camera at approximately 10:30 P.M. and called the police. She was not home at the time. She saw Appellant in a black leather jacket with a grey hoodie on the video just like the ones his father had seen him leave in. She also saw Brennan Montgomery lying in the middle of the road on his back on the video. He was barely conscious by the time law enforcement arrived and later died from three gunshot wounds to the head and chest. Jasmine Richardson died at the scene from multiple blunt force skull fractures and blunt force injuries to her head and upper body. She was found lifeless, face down in the mud. Taurus was shot in the chest, shoulder, and head, and was severely beaten but somehow

survived. Nov. 7-10, 2022 R. 111-121, R. 190-192, R. 209-226, R. 249; State's Exhibit 64 (security video).

Law enforcement executed a search warrant on Appellant's house and collected a damp gray hoodie and black leather jacket, a pistol grip, two LG cellphones, damp jeans with red and brown stains, and 6 spent .38 cartridge casings, along with a plethora of other items. A .38 H&K model handgun was found broken in two at the scene. After a Cellebrite report was run on the two cellphones, law enforcement discovered a conversation between Appellant and another person about a possible sale of the gun Appellant shot the victims with<sup>3</sup> that spanned from October 13th to the day after the incident, November 8, 2018. Appellant told the other person on November 8th that he no longer had the gun. Nov. 7-10, 2022 R. 144, R. 148, R. 160-164, R. 168-172, R. 197; State's Exhibits 10-14 (photos of the gun).

6'7" or 6'8" tall and lanky Choatte Neal was arrested on November 9th and was charged with two counts of murder and one count of attempted murder. Appellant was arrested a day later and after *Miranda* warnings were given, admitted to being on the porch and identified both Neal and himself in the porch security video. He also admitted to being in the car with the three victims. Choatte testified Appellant saw him in prison later and tried to get him to "come up with a story" that they had "shot [the victims] in self-defense because they tried to rob us." It turns out that Appellant had committed the murders and the attempted murder because "[t]hey got dubbed out," or kicked out of the Nine Trey gang of which both Appellant and Choatte were members. R. 250-255. Appellant called someone right after the murders and said, "It's done." Nov. 7-10, 2022 R. 199, R. 202-204, R. 250-255.

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<sup>3</sup> The gun's serial number was seen on a photo included in the conversation that matched the serial number of the gun found at the scene. Nov. 7-10, 2022 R. 182-185.

## STANDARD OF REVIEW

“Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of fact and law which appellate courts review de novo.” *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018); *United States v. Lopez-Osuna*, 242 F.3d 1191, 1198 (9th Cir. 2000). “In doing so, this Court must consider the defendant’s testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request.” *Samuel*, 422 S.C. at 602, 813 S.E.2d at 490; *United States v. Singleton*, 107 F.3d 1091, 1097 (4th Cir. 1997).

## ARGUMENT

- I. The Honorable Clifton Newman rightly denied Appellant representation from an unlimited number of free-of-charge attorneys after Appellant moved to relieve the first two and numbers three and four were unavailable. Judge Newman and Judge Benjamin offered Appellant the services of a fifth attorney, but Appellant turned them down. The fifth one was stand-by counsel at trial anyway. Appellant therefore voluntarily, knowingly, intelligently waived his right to an appointed attorney.**

Appellant argues his Sixth and Fourteenth Amendment rights to counsel were violated when the Honorable Clifton Newman denied his motion to appoint yet another lawyer to his case after he moved to relieve the first two, the third and fourth were unavailable, and Appellant turned down the services of the fifth. The State disagrees and submits Appellant's argument is without merit. Defendants are entitled to the services of a free-of-charge attorney, but they do not have the right to an unlimited selection from which to choose. This Court should affirm.

The Sixth Amendment to the United States Constitution provides criminal defendants the right to represent themselves at trial. U.S. Const. amend. VI. The Fourteenth Amendment applied the Sixth Amendment to the states and *Gideon v. Wainwright* ensured criminal defendants in this country the right to the assistance of counsel should they so choose. U.S. Const. amend. XIV; *Gideon v. Wainwright*, 372 U.S. 335 (1963). A defendant must therefore relinquish the right to counsel voluntarily, knowingly, and intelligently, must be made aware of the dangers of self-representation through “*Faretta* Warnings,” and the record must show the defendant knew what he was doing and made the choice to proceed *pro se* with his eyes wide open. *Faretta v. California*, 422 U.S. 806, 807, 819 (1975); *Gardner v. State*, 351 S.C. 407, 410-411, 570 S.E.2d 184, 185-186 (2002). If a defendant proceeds to trial *pro se*, a trial court may appoint a “stand by counsel” to aid the accused in the event the defendant should wish to ask for help or in the event a court must terminate the self-representation because of deliberate serious and obstructionist misconduct on the part of the defendant. *Illinois v. Allen*, 397 U.S. 337, 346 (1970). However,

states cannot force lawyers upon defendants. *Faretta*, 422 U.S. at 820-821. If the above benchmarks are met, though, the court's procedure in appointing or relieving counsel will be upheld. *Id.*

In South Carolina, if a defendant cannot afford an attorney, counsel may be appointed for him. S.C. Constitution art. I, § 14 ("Any person charged with an offense shall enjoy the right to . . . be fully heard in his defense by himself or by his counsel or both."); Rule 602, SCACR: Defense of Indigents; S.C. Code § 17-3-10 *et. seq.* If the criteria for indigency has been met, the county Public Defender's Office shall immediately thereafter enter into the representation of the accused. Rule 602(c), SCACR. Once a lawyer is appointed or retained, that lawyer typically should continue representing an accused until a final judgment, but a trial court may relieve a lawyer upon written petition and for good cause. Rule 602(e)(1)(2), SCACR. Judges may also appoint private lawyers off the South Carolina Bar's list pursuant to Rule 608, SCACR. If a defendant does not have counsel, the defendant should be given ample opportunity to be fully heard and be given every opportunity to call and cross-examine witnesses.

A defendant may lose his right to counsel, however, by waiver, by conduct (or misconduct), or by forfeiture. *Prince v. State*, 301 S.C. 422, 423-424, 392 S.E.2d 452, 463 (1990); *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 691 (Ct. App. 1996); *United States v. Goldberg*, 67 F.3d 1092, 1099 (3d Cir. 1995). If a defendant is warned ahead of time that waiver by conduct was possible, dismissing multiple appointed attorneys can be the functional equivalent of a voluntary and knowing waiver by conduct of the right to counsel, which is what occurred here. *Goldberg*, 67 F.3d at 1100; *United States v. Meeks*, 987 F.2d 575 (9th Cir. 1993). A waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Eason v. Eason*, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009).

Appellant was not entitled to an unlimited number of free-of-charge attorneys or the appointment of counsel of his choice. *Morris v. Slappy*, 461 U.S. 1, 13-14 (1983) (upholding the denial of a *pro se* motion for a continuance to allow his attorney—appointed 6 days earlier—more time for preparation and holding the Sixth Amendment did not guarantee a meaningful relationship between accused and counsel). “Not every restriction on counsel’s time or opportunity to investigate or consult with his client or otherwise prepare for trial violates a defendant’s Sixth Amendment right to counsel.” *Morris*, 461 U.S. at 11.

Here, Appellant was provided an attorney through the most critical period of the proceedings up until trial: he had a lawyer through arraignment, indictment, investigation, and preparation. He then knowingly and intelligently waived his right to a lawyer by moving to relieve two then refusing the third appointment after Judge Newman warned him ahead of time that if he relieved a second attorney another one may not be appointed for him. *See Osbey v. State*, 425 S.C. 615, 620, 825 S.E.2d 48, 50 (2019). A similar fact pattern was upheld in *United States v. Fazzini*, 871 F.2d 635 (7th Cir. 1989) (holding failure to cooperate with a fourth appointed attorney acted as a waiver of the right to counsel where the judge had warned him his conduct would result in him proceeding *pro se*.)

In this case, Public Defender Tracy Pinnock was appointed to represent Appellant according to the normal procedures, but Appellant moved to relieve her, and the Honorable Casey Manning granted Appellant’s motion on September 9, 2019. Appellant was unhappy with Ms. Pinnock because she did not deliver his discovery to him within thirty days of the motion to compel. (Appellant called it “his motion” at the hearing). July 11 R. 11. Appellant also was under the perception that she lied to him because of this. July 11 R. 4-5. Judge Manning then appointed Judah VanSyckel from the Rule 608, SCACR, list to represent Appellant. Appellant

moved to relieve him, too, and a second hearing was held on July 11, 2022 before the Honorable Clifton Newman. July 11 R. 1-33. Trial was scheduled to proceed at that point on October 31, 2022. Appellant was unhappy because Mr. VanSyckel had encouraged him to take the State's 50-year plea offer even though Appellant was facing multiple life without parole sentences. July 11 R. 5-6. He was in his early 20's (23 to be exact) at the time of the hearing. July 11 R. 19. Appellant was also unhappy because Mr. VanSyckel told him their best strategy was to stall as much as possible. July 11 R. 10. Judge Newman took the matter under advisement after stating he didn't "appoint lawyer after lawyer" –

You know, the State provides a lawyer free of charge and if the defendant does not want the lawyer that the State provides, the defendant can hire his own lawyer or he can represent himself, but he can't pick and choose saying I like this lawyer, I don't like this one, I want that one, I don't like that one. We don't go in this endless cycle of I don't like what this lawyer is telling me, I don't like what this one is telling me, this one is not working enough, et. cetera.

July 11 R. 9-10.

Judge Newman interpreted the miscommunications between Mr. VanSykel and Appellant to be misunderstandings and not lies. July 11 R. 16. Appellant then insisted the "system [was] corrupt. The only person who is really on your side is a paid lawyer, not no state paid lawyer . . . the system is corrupt people . . . ." July 11 Tr. 21. Judge Newman asked him who he wanted to take his case because "you can't get along with Pinnock and you can't get along with VanSyckel, [so] you won't be able to get along with another one either." July 11 R. 21-22. "I'm convinced no one will satisfy you." July 11 R. 26. Appellant said he did not know, and Judge Newman said, "I just want to know what's on your mind. I don't have to agree with your choice." July 11 R. 23-24. Appellant then pointed out two public defenders in the courtroom, but one was retiring and the other was moving, so they were unavailable to represent Appellant. July 11 R. 24-25.



A third hearing was held on August 15, 2022 regarding whether to relieve Mr. VanSyckel. Trial was two and a half months away by that point. Appellant again insisted he wanted counsel relieved and said he would rather represent himself than take the plea offer. August 15 R. 38-39. Judge Newman told Appellant he would have to represent himself if VanSyckel was relieved, and Appellant insisted that counsel be relieved. August 15 R. 39-40. Judge Newman granted Appellant's request but told Appellant that he would have to represent himself or hire a lawyer because "[y]ou will not get another free lawyer." August 15 R. 40. Appellant said, "I ain't representing myself, bruh." August 15 R 45. Judge Newman then told Appellant standby counsel from the Public Defender's Office would be appointed. August 15 R. 45.

Right before trial, a fourth hearing was called by the solicitor on October 14, 2022 to make sure "everyone was on the same page that . . . Mr. Brown [would be] representing himself on these charges." October 14 R. 49. Judge Newman appointed Tivis Sutherland as standby counsel and advised Appellant of the dangers of self-representation. "He did not want to have a lawyer that was provided to him, so he has to represent himself." October 14 R. 49-50.

A fifth hearing was held before the Honorable DeAndrea Benjamin on November 10, 2022, where Appellant was read the full *Faretta* warnings and was encouraged to utilize stand-by counsel's expertise. Nov. 7-10, 2022 R. 60-70. Stand-by counsel Tivis Sutherland offered to fully represent Appellant at trial, but he declined. *Id.* at 10. Judge Benjamin then told Appellant yet again that he had the right to an attorney and that the court was willing to fully appoint Mr. Sutherland to represent him, but Appellant declined again. *Id.* The court found he had the constitutional right to proceed without an attorney and the trial began. *Id.* at R. 69-70.

Here, Appellant was advised of his right to counsel and was adequately warned of the dangers of self-representation as the Constitution requires. His actions of relieving two attorneys, being offered the appointment of his choice but being unable to come up with one, and then refusing the judge's selection of a third constituted a waiver of the right to counsel by conduct. Appellant also was given the opportunity to hire his own attorney, but he did not do so; he was never denied the right to counsel.

Defendants are entitled to lawyers in this state, but no constitutional rule, statute, or case indicates trial judges are required to entertain endless motions to relieve counsel and then appoint unlimited free-of-charge attorneys to indigent defendants. Appellant knew he was proceeding *pro se* with his eyes wide open because Judge Newman had warned him that would happen if he chose to relieve his second lawyer. Judge Newman gave Appellant a few weeks to think about it, and Appellant chose to relieve Mr. VanSyckel anyway knowing full well he would likely not be appointed another attorney. Judge Newman extended the grace of appointing stand-by counsel even after that. Judge Benjamin and stand-by counsel Tivis Sutherland even then offered Appellant the appointment of a third free-of-charge attorney but Appellant turned him down. The State and the two trial judges complied with and ensured Appellant was accorded his constitutional rights, but they also understood that constitutional rights are waivable by intentional abandonment and relinquishment of those known rights. This Court should affirm.

## CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgments, convictions, and sentences of the lower court be affirmed.

Respectfully submitted,

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Attorney General

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By: s/ Melody J. Brown  
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OFFICE OF THE ATTORNEY GENERAL

Columbia, South Carolina  
October 31, 2024

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<sup>4</sup> Respondent notes that Former Assistant Attorney General Julianna Battenfield originally filed the Final Brief of Respondent, however Ms. Battenfield is no longer employed at the South Carolina Attorney General's Office.

Oct 31 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2022-001605

THE STATE, .....RESPONDENT,

v.

MICAH CHRISTIAN SYLVE BROWN, .....APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Amended Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

This 31st day of October 2024

s/ Melody J. Brown

Melody J. Brown

Senior Assistant Deputy Attorney General

ATTORNEY FOR RESPONDENT

Oct 31 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE, .....RESPONDENT,

v.

MICAH CHRISTIAN SYLVE BROWN, .....APPELLANT.

Appellate Case No. 2022-001605

**PROOF OF SERVICE**

I, Melody J. Brown, the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Amended Final Brief of Respondent, Certificate of Compliance, and Proof of Service has been forwarded to Appellant's counsel, Joanna K. Delany, Esq., via email today, October 31, 2024 to [jdelany@sccid.sc.gov](mailto:jdelany@sccid.sc.gov), and to her assistant, Sara McInnis at [smcinnis@sccid.sc.gov](mailto:smcinnis@sccid.sc.gov).

I further certify that all parties required by Rule to be served have been served.

This, the 31st day of October 2024

s/ Melody J. Brown  
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Micah Christian Sylve Brown, Appellant.

Appellate Case No. 2022-001605

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Appeal From Richland County  
Clifton B. Newman, Circuit Court Judge  
DeAndrea G. Benjamin, Circuit Court Judge

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Unpublished Opinion No. 2026-UP-174  
Submitted February 3, 2026 – Filed April 15, 2026

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**REVERSED AND REMANDED**

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Appellate Defender Joanna Katherine Delany, of  
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy  
Attorney General Donald J. Zelenka, Senior Assistant  
Deputy Attorney General Melody J. Brown, and Solicitor  
Byron E. Gipson, all of Columbia, for Respondent.

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**PER CURIAM:** Micah Brown appeals his conviction for two counts of murder and one count of attempted murder. Brown argues the trial court erred in denying him appointed counsel and requiring him to proceed to trial *pro se*. We reverse and remand for a new trial.

## **I. BACKGROUND**

Brown was indicted in 2019 for the November 2018 murders of Jasmine Richardson and Brennan Montgomery and the attempted murder of Taurus Williams. A public defender was appointed to represent him on the charges. In September 2019, Brown filed a *pro se* motion to relieve counsel. The circuit court granted the motion, relieving the public defenders' office and appointing an attorney from the Rule 608, SCACR, appointment list. Unfortunately, the recording of the hearing in front of the circuit court was lost when the court reporter experienced a "catastrophic failure" of her hard drive. A second attorney (Attorney 2) was appointed, but Brown moved to relieve Attorney 2 as well. Brown appeared in front of a different circuit court judge on July 11, 2022, to argue his motion to relieve Attorney 2.

At the time of the motion hearing in front of the circuit court, a trial date had been set for October 31, 2022.<sup>1</sup> Brown told the court he fired his first attorney because she lied to him about a motion and was "hiding" the motion from him. His grounds for dissatisfaction with Attorney 2 were that he had not requested a bond reduction on his behalf, he recommended Brown accept a plea offer of fifty years, and he had not devoted what Brown felt was sufficient time and attention to his case.

Attorney 2 told the court that Brown was only nineteen when he was arrested for the current charges. His bond was originally denied due to the violent nature of the offenses. Brown was charged with shooting one victim in the head, beating the second victim to death, and shooting and beating a third victim who survived. Despite the serious nature of the charges, Attorney 2 was able to get Brown a surety bond in the amount of \$500,000. He also hired an investigator in the case and hired a psychiatrist to evaluate Brown. Attorney 2 explained that, at his repeated urging, the Solicitor offered Brown a plea deal with a recommended sentence of thirty to fifty years imprisonment, which Brown declined. The State later withdrew the offer and at the time of the motion hearing the State was only offering a fifty-year sentence in exchange for Brown's guilty plea. Attorney 2 also

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<sup>1</sup> Brown also had another set of charges pending against him, including a first-degree burglary charge.

explained he did not want to request a bond reduction for fear that would spur the judge to set a trial date, which he did not think was in Brown's best interest. Attorney 2 testified the relationship between the two had deteriorated, with Brown repeatedly cursing at him and calling him vulgar names.

The circuit court judge advised Brown that he would not appoint a third lawyer to represent him, so he would either have to allow Attorney 2 to continue representing him or he would have to proceed without counsel. The judge expressed his feeling that Brown was being difficult to get along with. He warned him:

If I let [Attorney 2] go, if I let you relieve him, then you won't have a lawyer because I'm not going to appoint another one because if you can't get along with [the first attorney] and you can't get along with [Attorney 2], then you won't be able to get along with another one either. [Y]ou blow it with this lawyer, you're going to be here representing yourself because I don't just name lawyer after lawyer after lawyer because I'm convinced that no one can satisfy you.

Brown repeatedly told the court that he did not want to represent himself. However, he also made statements indicating he was not going to be satisfied with *any* appointed lawyer because of his professed belief that the system was corrupt and only a private attorney would advocate for him. The judge adjourned the hearing without making a ruling and told Brown he was going to let him think about it for a couple of weeks, again warning him that if he relieved Attorney 2 Brown would have to represent himself.

The parties reconvened on August 15, 2022, with Brown appearing in front of the same circuit court judge. Brown again stated he wanted Attorney 2 removed as his attorney, and the judge again warned him he did not have the right "to pick and choose." The judge found that Brown had not given the court any legitimate reason why his attorney should be relieved, and if he relieved his attorney then Brown would have to represent himself. When Brown persisted in asking for his attorney to be relieved, the judge granted the motion and stated that Brown would have to represent himself. The judge did not advise Brown of the dangers of self-representation at either the July 11 or the August 15 hearing, other than advising him that the murder charges carried a potential life sentence.

Brown appeared in front of the same circuit court judge again on October 14, 2022, for a status conference in advance of his November 7, 2022, trial date. At the status conference, Brown again stated he did not want to proceed *pro se* and was



not ready to go to trial. At the conclusion of the status conference, the judge stated, "*Mr. Brown has been advised of the dangers of self-representation*. He did not want to have a lawyer that was provided to him, so he has to represent himself." Nowhere in the record before this court, however, at any of his pre-trial hearings was Brown advised of the dangers of self-representation per *Faretta v. California*, 422 U.S. 806 (1975).<sup>2</sup> At the conclusion of the status conference, the judge appointed standby counsel to assist Brown at trial.

Brown met with standby counsel for the first time on the Thursday before trial. Counsel offered to represent him at trial, but Brown declined. On the first day of trial, Counsel confirmed that he was willing to represent Brown and had received the discovery in the case on the Friday before trial. The trial judge, who Brown had not previously appeared before, gave Brown thorough *Faretta* warnings and asked him repeatedly if he wanted Counsel to represent him. Brown repeatedly declined the offer while simultaneously also saying he did not want to represent himself. Brown did not request a continuance.

The case proceeded to a jury trial with Brown appearing *pro se* with the assistance of standby counsel. The trial judge explained to Brown that Counsel could not offer him any advice but could answer any procedural questions. Brown remained silent during most of the trial except for making a handful of hearsay objections. The jury deliberated for an hour and forty minutes before finding him guilty of all charges. Brown remained silent during the sentencing phase and did not offer any testimony or witnesses in mitigation. Brown had no prior adult record and was twenty-three at the time of trial. The trial judge sentenced Brown to life for each murder charge and to a term of thirty years for attempted murder, with all sentences to run concurrently.

## II. STANDARD OF REVIEW

"Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo." *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018). An appellate court "review[s] a [trial court's] findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo." *Id.* "In doing so, [an appellate court] must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the [trial court] at the time the defendant made his request [to waive his right to

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<sup>2</sup> Neither party argues on appeal that Brown was given *Faretta* warnings at the hearing in September of 2019, for which we do not have a record.

counsel]." *Id.*

### III. LAW AND ANALYSIS

"The Sixth Amendment guarantees a criminal defendant the right to the effective assistance of counsel; it also guarantees a defendant the right to represent himself. A defendant must necessarily choose between these guarantees." *Hines v. State*, 443 S.C. 32, 38, 902 S.E.2d 377, 380 (2024). "Courts have recognized three ways in which a defendant may relinquish his right to counsel": express waiver, waiver by conduct, or forfeiture. *State v. Boykin*, 324 S.C. 552, 556-57, 478 S.E.2d 689, 690-91 (Ct. App. 1996).

An express waiver must be knowing and intelligent. *Osbey v. State*, 425 S.C. 615, 618-19, 825 S.E.2d 48, 50 (2019). The defendant must "clearly and unequivocally" assert he wants to represent himself and do so knowingly, intelligently and voluntarily. *Faretta*, 422 U.S. at 835. "To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation." *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990).

"[The] defendant may also waive his right to counsel through his conduct." *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691. "Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a 'waiver by conduct.'" *Id.* *Faretta* warnings are required whether the waiver of counsel is by express request or by the defendant's conduct. *Osbey*, 425 S.C. at 620, 825 S.E.2d at 51; *see also Gardner v. State*, 351 S.C. 407, 413, 570 S.E.2d 184, 187 (2002) (holding petitioner, who was repeatedly advised of his right to a public defender and still proceeded *pro se*, did not knowingly waive his right to counsel where he was not warned of the dangers of self-representation).

In rare instances, a defendant may also forfeit his right to counsel. "Forfeiture results in the loss of the right [to counsel] regardless of the defendant's knowledge of either the consequences of his actions or the dangers of self-representation." *Boykin*, 324 S.C. at 557, 478 S.E.2d at 691. "Forfeiture is an extreme sanction in response to extreme conduct that imperils the integrity or safety of court proceedings." *Commonwealth v. Means*, 907 N.E.2d 646, 658 (Mass. 2009). The sanction is generally reserved for extremely serious misconduct involving physical violence, or threats of physical violence. *See Boykin*, 324 S.C. at 554, 558, 478 S.E.2d at 690, 692 (finding defendant who cussed his attorney and "came after [him]" at the detention center did not forfeit his right to counsel where he was not

warned of the consequences of his actions or the dangers of self-representation); *see also Gilchrist v. O'Keefe*, 260 F.3d 87, 89-90 (2d Cir. 2001) (upholding a forfeiture finding at sentencing phase after defendant punched his appointed attorney in the head); *United States v. Leggett*, 162 F.3d 237, 251 (3d Cir. 1998) (upholding a forfeiture finding at sentencing phase after defendant brutally attacked his attorney in the courtroom); *United States v. McLeod*, 53 F.3d 322, 325-26 (11th Cir. 1995) (upholding a forfeiture finding after defendant threatened to kill his attorney, threatened to sue him, and tried to persuade attorney to engage in unethical conduct). We find Brown's conduct in this case fell short of the egregious conduct necessary to establish forfeiture of the right to counsel. While Brown was undoubtedly rude and arrogant, and had cursed his attorney repeatedly, he did not physically attack him or threaten him with physical violence.

The U.S. Supreme Court has not mandated any particular script for a *Faretta* colloquy; rather, "[t]he information a defendant must possess in order to make an intelligent election . . . will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding." *Iowa v. Tovar*, 541 U.S. 77, 88 (2004). "Where, as in *Faretta*, the defendant is venturing to represent himself at trial, the trial court must rigorously convey specific warnings of the pitfalls of going to trial without a lawyer." *Hines*, 443 S.C. at 40, 902 S.E.2d at 381.

"In the absence of an inquiry by the [trial court], courts look to the record to determine if the accused had sufficient background to understand the disadvantages of self-representation." *State v. Cash*, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). The court considers the following non-exhaustive list of factors to determine if a defendant has sufficient background to understand the dangers of self-representation:

- (1) the accused's age, educational background, and physical and mental health;
- (2) whether the accused was previously involved in criminal trials;
- (3) whether he knew of the nature of the charge and of the possible penalties;
- (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case;
- (5) whether he was attempting to delay or manipulate the proceedings;
- (6) whether the court appointed stand-by counsel;
- (7) whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) whether he knew of legal challenges he could raise in defense to the charges against

him; (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment.

*Id.* at 43, 419 S.E.2d at 813. The erroneous deprivation of the assistance of counsel is *per se* reversible error and cannot be treated as harmless. *United States v. Goldberg*, 67 F.3d 1092, 1103 (3d Cir.1995); *see also Chapman v. California*, 386 U.S. 18, 23 & n.8 (1967) ("[T]here are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error . . . .")

Brown was unequivocally warned that if he persisted in requesting that Attorney 2 be relieved, he would then have to represent himself. The South Carolina Supreme Court has explicitly stated, however, that *Faretta* warnings are required whether the defendant's waiver of counsel is by "affirmative, verbal request" or "by conduct." *Osbey*, 425 S.C. at 620, 825 S.E.2d at 51; *see also Boykin*, 324 S.C. at 558, 478 S.E.2d at 692 (holding the defendant could not have waived his right to counsel "either expressly or by his conduct" where he was not warned of the dangers of self-representation); *Goldberg*, 67 F.3d at 1102-03 (finding that "any claim that [defendant] waived his right to counsel by conduct is precluded" by the court's failure to inform him of the risks of self-representation); *United States v. Padilla*, 819 F.2d 952, 958-59 (10th Cir. 1987) (finding no waiver by conduct where trial court failed to determine whether defendant appreciated the hazards of self-representation); *Wilkes v. Israel*, 627 F.2d 32, 34-35 (7th Cir. 1980) (finding a waiver by conduct was knowingly and intelligently made where trial court questioned defendant extensively about the inadequacies of conducting his own defense).

In this case, Brown was not advised of the dangers of self-representation until the morning of trial and thus could not have waived his right to counsel by his conduct before trial. In the absence of a specific warning, we next look to the *Cash* factors to determine if Brown had sufficient background to understand the dangers of self-representation. Brown was nineteen and had no adult criminal record at the time of his trial. There is nothing in the record to indicate whether he finished high school or ever held a job. While the court did discuss, generally, the charges and possible penalties, there is nothing else in the record to indicate Brown had sufficient background to appreciate the dangers of self-representation. His understanding of criminal motions practice seemed rudimentary at best.

The State argues Brown knowingly and intelligently waived his right to counsel when he declined the trial judge's offer to appoint standby counsel to represent him

on the day of trial. The State points out that the trial judge thoroughly advised Brown of the dangers of self-representation at that point and standby counsel was present and willing to represent Brown. Counsel met with Brown the previous Thursday and had received the State's discovery on the Friday before trial.

Brown cites *Powell v. Alabama*, 287 U.S. 45 (1932), for the proposition that no such last-minute appointment of counsel could possibly be effective. In *Powell*, the trial judge appointed "all the members of the bar" six days before trial for the defendants' arraignment. *Id.* at 53, 56. On the day of trial, a lawyer from out of state appeared for the defendants but stated he had not had an opportunity to prepare. *Id.* at 57. The trial court appointed the out of state lawyer to represent the defendants, with whatever help the local bar could provide. *Id.* at 57-58. The U.S. Supreme Court found that the last-minute appointments were "either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid." *Id.* at 53. The U.S. Supreme Court in *United States v. Cronin* referred to the circumstances in *Powell* as being "of th[e] magnitude . . . [that] although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." 466 U.S. 648, 659-60 (1984).

We find Brown's Sixth Amendment right to counsel was violated when he was not warned of the dangers of self-representation until the morning of trial. At that point, Brown was faced with the option of either representing himself or proceeding to trial with an unprepared attorney and losing the right to appeal the prior judge's denial of his request for counsel. The possibility that any lawyer could provide effective assistance for Brown at this late juncture was so low as to make the offer of counsel meaningless.

#### IV. CONCLUSION

A criminal defendant may waive his right to counsel where he is warned in advance that successive unfounded motions to relieve counsel will result in him proceeding *pro se*. However, such a "waiver by conduct" will only be considered knowing and intelligent if the defendant was also warned of the dangers of self-representation. In this case, Brown did not receive *Faretta* warnings until the morning of trial when it was too late for an attorney to provide him with meaningful assistance. We therefore find Brown was deprived of his Sixth Amendment right to counsel. We reverse his conviction and remand for a new trial.

**REVERSED AND REMANDED.<sup>3</sup>**

**GEATHERS, HEWITT, and CURTIS, JJ., concur.**

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<sup>3</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Richland County

The Honorable Clifton B. Newman, Circuit Court Judge  
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

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Appellate Case No. 2022-001605

THE STATE,

RESPONDENT,

v.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT.

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**PETITION FOR REHEARING**

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On April 15, 2026, without the benefit of oral argument, this Court reversed the convictions of Micah Christian Sylve Brown in an unpublished opinion. *See State v. Brown*, Op. No. 2026-UP-174 (S.C. Ct. App. filed Apr. 15, 2026). The Court found that Brown had not knowingly and intelligently waived his right to counsel, and as a result Brown had been denied his right to counsel at trial.

Pursuant to Rule 221(a), the State respectfully petitions for rehearing because it appears that this Court overlooked the indications that Brown either forfeited his right to counsel or waived it by conduct. The State asks this Court to grant rehearing, even if for the limited purpose of considering oral argument.

The State respectfully contends that this Court conflated two separate inquiries into one. The first inquiry is whether Brown could dismiss the attorneys he received through the public defender's office; the second inquiry is whether he had waived or forfeited his right to counsel. Often, these inquiries are rightly combined. *See, e.g., State v. Boykin*, 324 S.C. 552, 559, 478

S.E.2d 689, 692 (Ct. App. 1996) (holding that “[w]hile the trial judge was certainly justified in granting” one attorney’s “motion to be relieved as counsel, substitute counsel should have been appointed for” the defendant). But under the unique facts of this case, the two should be considered separately.

As this Court is aware, Brown had one public defender relieved in September 2019. (R. p. 5, ll. 2–9; p. 305). At a hearing on July 11, 2022—more than three months before Brown’s trial—he moved to relieve the second attorney who had been appointed to represent him. (R. p. 6, ll. 1–24). The circuit court warned Brown that “I don’t appoint lawyer after lawyer after lawyer.” (R. p. 9, ll. 4–5). Brown shared his opinion with the court that “[t]he only person who really on your side is a paid lawyer, not no state paid lawyer, but one you pay with your own money, that’s the one who going to work for you.” (R. p. 21, ll. 12–14). The court advised Brown to reconsider whether he wanted to relieve his defense attorney. (R. p. 29, l. 20–p. 32, l. 18). The court warned Brown that he “might have to handle this one yourself.” (R. p. 30, l. 25–p. 31, l. 1).

At a hearing on August 15, 2002, Brown repeated his request to relieve his counsel. (R. p. 37, l. 3–13). As Brown was presenting his request to the court, the court said: “Well, you let him -- if he’s fired, are you going to represent yourself? I think I went through that with you before.” (R. p. 37, ll. 6–8). Brown appeared to agree with the circuit court—saying, “You did”—then returned to discussing why he wanted to relieve counsel. (R. p. 37, ll. 9–10). The court again told Brown that the court wouldn’t appoint a third lawyer for him. (R. p. 40, ll. 18 – 23). At the end of the hearing, the circuit court ruled that counsel could be relieved and “Mr. Brown will represent himself” with standby counsel on hand. (R. p. 45, ll. 11–15). Brown asserted that he wouldn’t represent himself. (R. p. 45, ll. 16–18).

The circuit court held another hearing—essentially a “status conference”—on October 14,



2022. (R. p. 48; R. p. 49, ll. 4–15). The circuit court appointed Tivis Sutherland as standby counsel. (R. p. 50, l. 12–p. 51, l. 3). The court said Brown would have to represent himself because he had relieved other counsel, “[u]nless he hired someone else in the meantime.” (R. p. 51, ll. 2–7).

Brown’s trial began November 7, 2022. (R. p. 53).<sup>1</sup> The trial court noted that standby counsel offered to represent Brown the preceding Friday, and Brown agreed that he had declined. (R. p. 62, ll. 2–10). The trial court warned Brown about the dangers of self-representation, about the technical nature of criminal law, and about the potential penalties Brown faced if convicted. (R. p. 63, l. 15–p. 68, l. 16). During the discussion, standby counsel again talked to Brown. (R. p. 65, ll. 3–6). Asked again if he wanted to represent himself, and then if he wanted standby counsel to do so, Brown invoked his “right to remain silent.” (R. p. 65, ll. 10–16). Brown was convicted of two counts of murder and one count of attempted murder. (R. p. 295, ll. 4–14). The trial court later sentenced Brown to life without parole for the two counts of murder and 30 years on attempted murder, to run concurrently. (R. p. 302, ll. 16–22).

On appeal, this Court found that a defendant may expressly waive his right to counsel; may waive that right by conduct; and in “rare instances,” forfeit the right. The Court found that because Brown had not been given his warnings pursuant to *Faretta v. California*, 422 U.S. 806 (1975), prior to the beginning of his trial, Brown could not have waived his right to counsel before then. The Court further found that because Brown’s standby counsel likely could not have adequately prepared for trial, the *Faretta* warnings administered the morning of the trial were not effective. The Court also found Brown had not forfeited his right to counsel.

Respectfully, the State disagrees. First, Brown was entitled to relieve his counsel before

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<sup>1</sup> The earlier proceedings were held before the Honorable Clifton B. Newman; the Honorable DeAndrea G. Benjamin presided over the trial.

trial. He was also entitled to *Faretta* warnings before he represented himself. But it was not certain that he would represent himself until he declined to clarify his intent after the trial began.

Some of the cases cited by this Court can be distinguished. For example, in *Gardner*, our supreme court found that the defendant had not been warned about representing himself *at the plea hearing*.

We find Petitioner was not adequately apprised of the dangers of self-representation. The plea judge *never even acknowledged that Petitioner did not have counsel with him at the plea hearing*. The judge did not inquire about why Petitioner had relieved his counsel, or if he wished to have counsel present. There is *absolutely no mention by the judge of anything relating to the right to an attorney, the dangers of self-representation, or the like in the guilty plea transcript*. Furthermore, Petitioner did not say anything about counsel. He never stated that he did not want an attorney, that he wished to waive this right, or that he wanted to represent himself.

*Gardner v. State*, 351 S.C. 407, 412, 570 S.E.2d 184, 186 (2002) (emphasis added). The facts here are strikingly different. At least two (and likely three) judges had at least four (and likely five) conversations with Brown about his right to counsel. He was reportedly warned that his actions would be construed as a waiver of counsel. And on the first day of the trial—as he declined a final opportunity to be represented by counsel—he was given *Faretta* warnings.

The State would also respectfully note that the circumstances here are a good distance from the situation in *Powell v. Alabama*, 287 U.S. 45 (1932). There, the United State Supreme Court observed that while the state court had vaguely appointed members of the Bar to assist the defendants, “until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants.” *Id.* at 56. That is not the case with Brown. He had been appointed two attorneys before trial and was offered a third before trial—albeit shortly before trial.

Here, Brown at the very least waived his right to counsel by refusing to accept any attorney the State provided to him—and by making it clear that he did not believe a court-appointed lawyer

would protect his interests. And to the extent that this Court examines the *Cash* factors, the State would respectfully ask it to reconsider whether they weigh as heavily in Brown's favor as it might appear. *State v. Cash*, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). While some of the factors favor Brown, he was represented by counsel before the trial, there is considerable reason to believe that he was attempting to manipulate or delay the proceedings, and the trial court did appoint standby counsel.

Finally, while the State does not dispute that forfeiture should be found sparingly, it does not believe Brown's actions cannot be construed that way. *See United States v. McLeod*, 53 F.3d 322, 325 (11th Cir. 1995) ("The Sixth Amendment right to counsel, for example, may be forfeited by a defendant's failure to retain counsel within a reasonable time, even if this forfeiture causes the defendant to proceed *pro se*."). He repeatedly declined extended offers of counsel, even after being advised that it could be construed as a decision to represent himself, was often belligerent towards the courts as they tried to figure out what he wanted out of his representation, and ultimately relied on his right to remain silent at the critical juncture when the trial court was trying to determine if he would continue *pro se*. He might not have physically threatened his lawyer, but he did obstruct the courts as they tried to arrange counsel for him.

For all these reasons and those stated in its brief, the State respectfully asks this Court to grant this petition for rehearing, allow oral argument on the case, and then affirm Brown's convictions.

Respectfully Submitted,

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By: s/R. Brandon Larrabee  
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ATTORNEYS FOR RESPONDENT

April 30, 2026.

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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Richland County

The Honorable Clifton B. Newman, Circuit Court Judge  
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT.

Appellate Case No. 2022-001605

**PROOF OF SERVICE**

I, **R. Brandon Larrabee**, of counsel for the Respondent, hereby certify that pursuant to Rule 262(c)(3), SCACR and the Supreme Court order of April 24, 2024, the Petition for Rehearing has been forwarded to Appellant's counsel, Joanna Katherine Delany, Esq., via email today, April 30, 2026, to [jdelany@sccid.sc.gov](mailto:jdelany@sccid.sc.gov), and to her assistant at [smcinnis@sccid.sc.gov](mailto:smcinnis@sccid.sc.gov).

I further certify that all parties required by Rule to be served have been served.

This 30<sup>th</sup> day of April, 2026.

s/ R. Brandon Larrabee

R. Brandon Larrabee  
Assistant Attorney General

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**From:** [Brandon Larrabee](#)  
**To:** [Court Of Appeals Filings](#)  
**Cc:** [Delany, Joanna](#); [Mcinnis, Sara](#); [Brandy Rankin](#); [Angela Brown](#)  
**Subject:** 2022-1605 The State v. Micah Christian Sylve Brown - Petition for Rehearing  
**Date:** Thursday, April 30, 2026 5:00:00 PM  
**Attachments:** [Micah Brown PFR.pdf](#)  
[image001.png](#)

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**Apr 30 2026**  
**SC Court of Appeals**

Good afternoon,

Please find attached the Petition for Rehearing in the State v. Micah Christian Sylve Brown. Please file this with the Court. A proof of service will follow.

**R. BRANDON LARRABEE**, Assistant Attorney General  
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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Clifton B. Newman, Circuit Court Judge  
Honorable DeAndrea G. Benjamin, Circuit Court Judge

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Opinion No. 2026-UP-174

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THE STATE,

RESPONDENT,

V.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001605

---

RETURN TO PETITION FOR REHEARING

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Pursuant to Rule 221(a), SCACR, Appellant Micah Brown requests that this Court deny rehearing. This Court correctly held Appellant Brown was deprived of his Sixth Amendment right to counsel.

The court erred where it denied Mr. Brown counsel in his trial for murder and attempted murder, where Mr. Brown did not waive his right to counsel by affirmative request or by misconduct, since an accused has the fundamental right to counsel.

The right to counsel is a fundamental right. *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). Courts have recognized three ways a defendant may relinquish his right to counsel: 1) an express waiver, 2) a waiver by conduct, or 3) forfeiture. *State v. Boykin*, 324 S.C. 552, 556-57, 478 S.E.2d 689, 690-91 (Ct. App. 1996).

This Court correctly found there no express waiver of the right to counsel, as an “express waiver must be knowing and intelligent.” *Osbey v. State*, 425 S.C. 615, 618-19, 825 S.E.2d 48, 50 (2019). For a knowing and intelligent waiver to occur, the defendant must be advised of right to counsel and adequately warned of dangers of self-representation. *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990). When Appellant appeared on the morning of his trial without counsel, he had not been provided with warnings pursuant to *Faretta v. California*, 422 U.S. 806 (1975), regarding the dangers and disadvantages of self-representation.

This Court also correctly found there was no waiver by conduct. “Once a defendant has been warned that his misconduct will thereafter be treated as a waiver of his right to counsel, any subsequent misconduct is treated as a ‘waiver by conduct.’” *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691. *Faretta* warnings are required for a waiver by conduct. *Osbey*, 425 S.C. at 620, 825 S.E.2d at 51. Appellant did not receive adequate *Faretta* warnings until the morning of his trial. Therefore, this Court correctly concluded he could not have waived his right to counsel by his conduct before trial, and he committed no misconduct at trial.

Additionally, were the doctrine of forfeiture to be recognized in this state, Appellant did not forfeit his right to counsel. “Forfeiture is an extreme sanction in response to extreme conduct



that imperils the integrity or safety of court proceedings.” *Commonwealth v. Means*, 907 N.E.2d 646, 658 (Mass. 2009). *See, e.g., United States v. McLeod*, 53 F.3d 322, 325-26 (11th Cir. 1995) (in trial for retaliating against a witness, defendant’s conduct forfeited his right to counsel where he was threatened to kill counsel, threatened to sue counsel, and asked counsel to engage in unethical conduct). Forfeiture results in the loss of the right regardless of the defendant’s knowledge of either the consequences of his actions or the dangers of self-representation. *Boykin*, 324 S.C. at 556, 478 S.E.2d at 691.<sup>1</sup> This Court correctly recognized that there was no extreme conduct here. Appellant did not threaten or attack anyone. Moreover, the trial court did not identify any misconduct by Appellant that would support forfeiture. It merely found he was “difficult to get along with.” R. 23, ll. 7-8.

The State argues Appellant forfeited his right to counsel as he “did obstruct the courts” when they tried to arrange counsel for him and “refus[ed] to accept any attorney the State provided to him[.]” Petition for Rehearing at 4; 5. Appellant did not fail to appear for court and he was indigent. He did not seek to raise frivolous defenses or abuse the court process. The hearing on the motion to relieve counsel took place several months before the scheduled trial date. Appellant had expressed his desire to relieve counsel a year before. R. 22, ll. 19-24. This was not a morning-of-trial attempt to delay. Had substitute counsel been appointed at the hearing, he or she would have had months to prepare for trial. Appellant expressed legitimate complaints that counsel seemingly insisted he plead guilty to murder when he did not want to take the plea offer, and that counsel was dilatory. R. 10, ll. 10-15; R. 14, l. 23 – 15, l. 14; R. 17, l. 16 – 29, l. 19. *See United States v. Cronin*, 466 U.S. 648, 656 n. 19 (1984) (even when no theory of defense is available, once the decision to stand trial has been made, counsel must hold

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<sup>1</sup> “[W]e need not decide whether South Carolina should embrace the doctrine of forfeiture . . .” *Id.*, 324 S.C. at 558, 478 S.E.2d at 692.

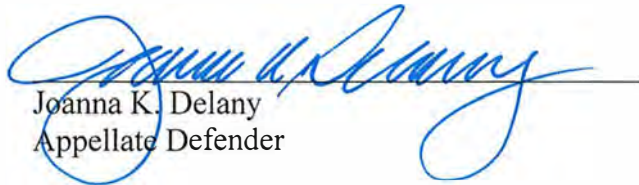
the prosecution to its heavy burden of proof beyond a reasonable doubt). Counsel did not identify any reason to think a favorable plea offer would be made. Moreover, Appellant did not refuse to accept the help of any attorney. Appellant asked the court to substitute counsel well in advance of his trial, and when pressed by the court to state what lawyer he would like appointed, he named two public defenders but stated he would accept “[w]hoever you put me with.” R. 24, l. 14 – 25, l. 19.

Next, this Court correctly found that nothing in the record indicated Appellant had sufficient background to appreciate the dangers of self-representation. Absent adequate *Faretta* warnings, “courts look to the record to determine if the accused had sufficient background to understand the dangers of self-representation.” *State v. Cash*, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). Courts consider the following factors in determining if an accused had sufficient background to understand the disadvantages of self-representation. (1) the accused’s age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused’s waiver resulted from either coercion or mistreatment. *State v. Cash*, 309 S.C. at 43, 419 S.E.2d at 813. The State argues the *Cash* factors favor its position, positing that Appellant was trying to

“manipulate or delay the proceedings.” Petition for Rehearing at 5. The *Cash* factors favor Appellant. As discussed above, Appellant had legitimate complaints about counsel and this was not a delay tactic. Appellant was young and had no adult criminal record. R. 66, ll. 11-12; R. 207, ll. 16-19. By his speech, he appeared uneducated. There was no indication he had a background which would have independently informed him of the dangers of self-representation. Appellant’s repeated statements that he wanted to remain silent indicate that he wanted to protect his constitutional rights, but he did not know how to do so. R. 61, l. 4 – 67, l. 5.

This Court correctly held the morning-of-trial *Faretta* warnings came too late. *See State v. Reed*, 332 S.C. 35, 44, 503 S.E.2d 747, 751 (1998) (court did not err by denying defendant’s request to have standby counsel represent him on eve of sentencing phase, as court was faced with allowing standby counsel to step in and cross-examine witnesses on less than twenty-four hours preparation); *United States v. Cronin*, 466 U.S. at 659-60 (Adversary process is presumptively unreliable when “although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.”); *Powell v. Alabama*, 287 U.S. 45, 58 (1932) (right to counsel “is not discharged by an assignment [of counsel] at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.”). A fair reading of this record shows Appellant was legitimately concerned standby counsel had not had enough time to prepare for trial. Absent an opportunity to prepare the case with Appellant, morning-of-trial appointment of counsel in this murder case would have still left Appellant with an inherently unfair trial, as he would not have been “accorded the right of counsel in any substantial sense.” *Id.*, 287 U.S. at 58.

This Court correctly reversed the case. The erroneous deprivation of the assistance of counsel cannot be treated as harmless; it is “*per se* reversible error.” *State v. Boykin*, 324 S.C. at 555, 478 S.E.2d at 690; *see United States v. Goldberg*, 67 F.3d 1092, 1103 (3d Cir. 1995) (same); *Chapman v. California*, 386 U.S. 18, 23 & n. 8 (1967) (“there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error”). This Court should deny rehearing.



Joanna K. Delany  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 18th day of May, 2026.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**RECEIVED**  
**May 18 2026**  
**SC Court of Appeals**

Appeal from Richland County

Honorable Clifton B. Newman, Circuit Court Judge  
Honorable DeAndrea G. Benjamin, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MICAH CHRISTIAN SYLVE BROWN,

APPELLANT

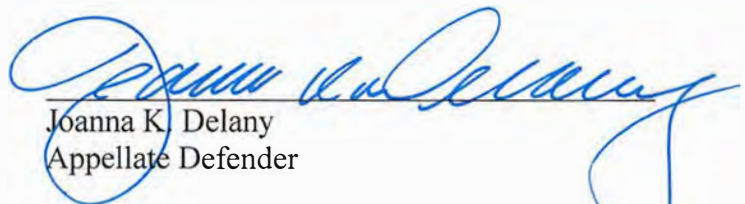
APPELLATE CASE NO. 2022-001605

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Petition for Rehearing in the above-referenced case has been served upon R. Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Micah Christian Sylve Brown, #389529, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 18th day of May, 2026.

  
Joanna K. Delany  
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

May 18 2026

SC Court of Appeals

**From:** [Mcinnis, Sara](#)  
**To:** [Brandon Larrabee](#)  
**Cc:** [SC - BROWN ANGELA](#); [Delany, Joanna](#)  
**Subject:** 2022-001605 The State v. Micah C. S. Brown Return to Petition for Rehearing  
**Date:** Monday, May 18, 2026 5:00:00 PM  
**Attachments:** 2022-001605 The State v. Micah C. S. Brown Return to Petition for Rehearing.pdf  
AG Cover Letter - Return to PFR.pdf

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Good Afternoon Mr. Larrabee,

Attached for service in the above-referenced case is the Return to the Petition for Rehearing, which will be filed with the Court of Appeals today, May 18, 2026, via email filing.

Thank you,

Sara McInnis  
Administrative Assistant  
South Carolina Commission on Indigent Defense  
Appellate Division  
(803) 734-1330

# The South Carolina Court of Appeals

The State, Respondent,

v.

Micah Christian Sylve Brown, Appellant.

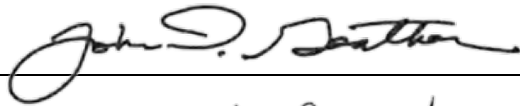
Appellate Case No. 2022-001605

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## ORDER

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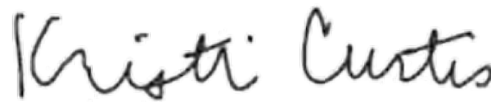
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Melody Jane Brown, Esquire

Alan McCrory Wilson, Esquire

Joanna Katherine Delany, Esquire

Donald J. Zelenka, Esquire

**FILED**  
**Aug 12 2026**

Byron E. Gipson, Esquire  
Richard Brandon Larrabee, Esquire