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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
FROM THE DECEMBER 5-13, 2022 TRIAL: STATE'S EXHIBITS #20, 25, 27, 28 (PHOTOGRAPHS), STATE'S EXHIBIT #71 (DVD OF INTERVIEW), AND DEFENDANT'S EXHIBIT #108 (DVD).**

like you were in danger but you were going towards the danger, right?

A. Yeah, going towards the front room where I heard the danger at, correct.

Q. All right, and how long, once you were in the hallway, did you take to assess the situation?

A. I didn't take no time to assess the situation. I had already ---

Q. No time?

A. --- assessed it when I was in the room.

Q. No time to assess. What could you see from your bedroom?

A. Couldn't see nothing from my bedroom. Just heard the noises that I thought was people breaking into my house.

Q. Okay. Let me ask you this.

A. Uh-huh.

Q. I -- what if it had been the police there to perform a search on you for all the weed that was there?

A. They would have -- the police beat on the door or notified somebody first. They didn't. And even if it -- if it would have been the police, then I would have got killed.

Q. All right, and what -- you, you took no time to assess the situation once you left your room. What did

you observe in your living room?
A. I didn't observe nothing. As soon as I got to the hallway, to the end of the hallway and I heard where the noise was coming from, I shot towards that area as I was still moving.
Q. And you didn't, you didn't tell the officers you saw two guys on top of one another fighting?
A. Yeah, that was simultaneously as I had already started firing. So, as you -- if you see the corner from the house, if you move and shooting, if you moving around the corner, when you -- that corner isn't nothing but a little edge right here. So, your body, as you shooting, your body would have already been moved all the way around. So, as you finish shooting, you have seen people on the ground, yes, sir.
Q. Okay, and how are you shooting around a corner? I'm just curious about that.
A. Well, as your body coming down the hallway, you -- what you seen with your own eyes, and I leaned around covering myself because I thought somebody was around there with guns. So, I shot to where I heard the commotion from still using the wall as cover as I was moving. Correct.
Q. Who taught you that move?
A. I just learned that from playing *Call of Duty*.

Q. *Call of Duty*?
A. Yes, sir.
Q. Okay. You saw that in a video game and you thought that's what you were going to do?
A. To protect my life, yes, sir.
Q. And now that you announce I've got a gun when you see these two people on the ground ---
A. No.
Q. --- tussling around?
A. No, sir.
Q. You had two roommates on February 7, 2019, correct?
A. Uh-huh.
Q. You had two male roommates on February 7, 2019, correct?
A. Correct.
Q. You had two Black male roommates on February 7, 2019, correct?
A. Correct.
Q. You had two Black male roommates in their early twenties in 2007 -- 2019, correct?
A. Correct.
Q. And so when you see two Black males in their early twenties on the floor wrestling ---
A. Well, I wouldn't be able -- I wouldn't be able to see that. I wouldn't be able to see that, sir. How --

what of age they would have been, it could have been two people in they sixties. How would I have been able to know?

Q. All right. So, did you think you just got lucky that you hit them every time you fired a shot?

A. Yes, sir.

Q. Because there's no shots in the walls or anything.

A. Yes, sir.

Q. You mean you, you hit them every time?

A. Yeah. I didn't say that I aimed towards the wall. If I was coming around the corner, the only way I would have been able to hit the wall is if I would had the gun almost facing this way. That would then wouldn't make sense.

Q. Why would two people who were doing a home invasion be fighting one another in your living room?

A. Well, in the home -- once I heard the TV -- like I said in my original testimony, when I heard the TV fall, that's when I got up and acted because that was on the side. My game's connected to it. So, that was my time to act. I felt like that.

Q. All right.

A. I didn't know that they was fighting or didn't think that they was fighting until I made it all the way around the corner.

Q. Why did you tell law enforcement there were two guys fighting and they ---

A. Well, I was speculating on what happened. Once I seen that two people that was on the ground and I was -- when I was in the interrogation room, I was speculating to what possibly could have happened, why they could have possibly been fighting. That's what I been doing the whole time because I don't know. I was in the room.

Q. Well, would you be able to demonstrate the maneuvers you took when you walked down the hall and how you shot the people?

A. If you want me to.

Q. That's -- I would like you to. Would you mind?

A. Hu-uh.

(A PAUSE.)

MR. SCOTT: And with Your -- with Your Honor's permission, maybe -- I've kind of laid out some of your -- based on the dimensions of a defense exhibit, the general dimensions of the room where the incident occurred. I don't know if they can see from a seated position. I'm going to attempt to have him demonstrate how he went into the room before firing a weapon.

And, Judge, I have a prop gun. It is -- it's incapable of firing. It's made out of plastic. Does not have any ---

THE COURT: Okay.

MR. SCOTT: --- firing mechanism.

Q. All right. So, does this represent generally your hallway?

A. Uh-huh.

Q. All right, and if we take a right right here, that's your kitchen, correct?

A. No, it doesn't -- when you take a right when you come out my room, that's the bathroom right there.

Q. Right behind you ---

A. On ---

Q. --- that's Tonio's room?

A. Correct.

Q. All right, and you look there and he's not there, right?

A. Why would I look here?

Q. You've got to step over it basically to get to the hallway, right?

A. No. I got to step over what?

Q. Your bedroom's right here. You stepped out in the hall, right?

A. Uh-huh.

Q. Right there is an opening of his closet, correct?

A. Yeah.

Q. All right.

A. I did not ---
Q. You didn't look at it?
A. No. Why would I look that way when the break in coming from this way?
Q. You don't know if your roommate's there or not, do you?
A. Yes, I know if he there. I said from the ---
THE COURT: Talk louder, please.
A. I said from the beginning I thought Tonio and Sam was gone; I been saying that the whole time.
Q. You thought?
A. Exactly.
Q. Did you check to see if he was there?
A. No.
Q. Okay, and then you walk right here, and that's the doorway that goes into Sam Thomas's room?
A. And I never looked there.
Q. Why not?
A. Because why would I do that?
Q. Because there's a noise coming out here and you want to make sure ---
A. But ---
Q. --- it's not your roommate.
A. But they would have made a sound. They would have yelled out something. I know both they voice. I been

living with them for a year. We already discussed that. I testified to that, right?

Q. And you're 100 percent certain that they would have made a sound?

A. Correct.

Q. Okay. You know that.

A. Uh-huh.

Q. All right. Show us -- and I guess this will be the wall.

A. The line, the line is -- the line's the wall?

Q. Yeah.

A. Okay.

Q. All right.

A. So, I came down. I came around the corner, and when I got right here, I started shooting. That's -- my body's still moving like that.

Q. Okay.

A. And I ended up right here.

Q. All right. Then what did you do?

A. And that's when I seen what it was and so I really -- oh, shit. I start panicking and just -- I was crying and hysterical. So, I walked to the front door, which would be this -- I viewed this as -- the front door right here?

Q. That's your front door, correct.

A. All right. So, I walked to the front door. When I opened the front door, Ieasha and his mama was coming up the stairs, which you would have to walk up this way first and come up this way. So, they was already at the top of the stairs and I let them in.

Q. All right, and how did the casings -- the two casings were right here.

A. I have ---

Q. You know how they got there?

A. I have no clue.

Q. Were you shooting from over here?

A. No, sir.

Q. All right. You don't know how they got there?

A. No, sir.

Q. Your testimony is that you're shooting around that corner before you even go?

A. Yes, sir, and my body was still moving, yes, sir.

Q. Your body's still moving. So, you're going out ---

A. Yeah.

Q. --- shooting at them like that?

A. Correct.

Q. Okay. Do you know why there weren't any casings in the hallway?

A. No, sir, I never said I started shooting from the hallway. I said I started shooting up behind this

corner right there.
Q. You're right there?
A. So, it in the -- the shells would have went out this way. They wouldn't of came out this way back to the hallway. They would have came out the other way ---
Q. Okay.
A. --- going towards the front door.
Q. Was there any reason there's no shells in the kitchen?
A. No, sir.
Q. Well, you just told me they would be going out this way.
A. Yeah, but the kitchen -- it's a wall right there. The kitchen opening would be back here somewhere.
Q. Okay. The crime scene said all of the shell casings are right here on the bodies.
A. Correct.
Q. And then there's two over here.
A. Yes.
Q. You don't know why?
A. No, sir.
Q. All right. Who was laying on their back when you come around the corner?
A. Antonio.
Q. Tony. Eric's on top of him?

A. Correct.
Q. Okay. Show me how you pressed against Eric's head before you shot him in the head.
A. I didn't press it against his head. Well, I don't remember pressing it against his head. That's what it saying -- that's what they -- the specialist did get up here. But I don't remember doing that.
Q. Okay. Did you black out maybe or something?
A. No, sir.
Q. Okay. Did you see any singe marks? Did you see the imprint of your pistol in the back of his head?
A. No, sir.
Q. You want to look at the pictures?
A. I seen them yesterday, but you can show them to me again if you want to.
Q. Okay. You saw them yesterday, right?
A. Correct.
Q. So, why did you press the gun against Eric's head when ---
MS. YOUNG: Your Honor, asked and answered.
Q. --- you pulled the trigger?
THE COURT: Objection's overruled.
Q. Why did you do that?
A. I don't remember doing that.
Q. You don't dispute the evidence then, do you?

A. No, sir.
Q. Do you see the singe marks on the back of Eric's head, don't you?
A. Yes, sir.
Q. Was that your kill shot?
A. No, sir. But I don't, I don't know. I just was trying to protect my life shooting towards people or whatever.
Q. That's ---
A. Well ---
Q. --- a hell of a thing to forget, isn't it?
A. Yes, sir.
Q. But you don't remember it?
A. I don't remember doing that.
Q. Okay. You remember getting on your knees and pressing down against his head?
A. No, sir.
Q. How could you forget something like that?
A. I know I didn't do that.
Q. Tell me how it happened.
A. I don't know how it happened. I told you exactly what happened just now and I explained. Even demonstrated it for you.
Q. You're not demonstrating how he got that contact wound to the back of his head.

A. I don't know how he got that.
Q. Okay. No explanation?
A. No, sir.
Q. You can take your seat.
All right. What did you do after you killed these two young men?
A. As I was just telling you, I walked to the front door and I let his mom and his girlfriend inside the house.
Q. I heard that. Say -- something about it took you two minutes to answer the door. Is that incorrect?
A. That's incorrect.
Q. All right. So, you went immediately up there?
A. Immediately to the door. I opened the front door. His mom and his girlfriend was walking up the stairs.
Q. And where was your gun when you opened the door?
A. Still in my hand.
Q. Okay. Then what did you do with it?
A. As I let them in, she walked in, grabbed Eric off the top of Antonio. I walked to the back to grab my phone to call the police because I wasn't going to move them until I call the police.
Q. Okay. So, when that expert was testifying about the movement of your phone, that really doesn't tell us anything because you didn't grab it until after all this

was over?
A. Correct.
Q. So, he testified basically for nothing?
A. Well, he testified that any way between ---
MS. YOUNG: Objection. Pitting.
THE COURT: The objection's sustained.
Q. All right. So, you leave what -- I'm sorry. When do you leave the apartment?
A. Well, after I let them in and I called the police, Shakihla, I believe she's suppose to be one of your witnesses. I don't know what happened to her, but she walked up inside the house. She knocked on the door. It was her and the dude. I think Mr. Charles. The other guy who you got up here to testify, he never walked inside. But when she walked in, she seen them on the ground.

At this time nobody knows what happened. They just upset about the people on the ground that's dead. We all sad. So, she seen me with the gun still in my hand, and she walked over to me and grabbed it out my hand and put it inside her pants and walked out.

Q. Okay. So, nobody at that point knew you were the shooter?
A. No, sir.
Q. Why didn't you stay on the scene after law

enforcement had been called?
A. I'm called -- I'm the one who called law enforcement, and I left out the apartment because it was mostly people inside. Multiple ex-family members. I didn't feel like that was a safe place to stay.
Q. Okay. Why didn't you stand down at the bottom of the stairs and wait for police?
A. I did.
Q. You did?
A. Yes, sir.
Q. Okay. Let me show you -- well, you kind of have a defense exhibit like this, but this is State's 77.
A. Uh-huh. Correct.
Q. You see yourself in that picture?
A. Yes, sir, right there.
Q. Okay, and that's at 9:02?
A. Uh-huh.
Q. Okay. So, Ieasha testified and we heard 8:55 is when she calls ---
A. Uh-huh.
Q. --- Eric's phone after she heard the gunshots.
A. Uh-huh.
Q. So, do you agree or disagree, about 8:55 is when you killed the two guys?
A. I can agree with that.

Q. 8:55? All right. So, I've got you seven minutes later out in the parking lot.
A. Uh-huh.
Q. Okay, and you remember when that officer got out. Said where's the shooter, where's the shooter?
A. No, sir.
Q. You don't remember that?
A. I don't remember them saying that.
Q. Okay. You, you wouldn't disagree that this officer was yelling where's the shooter when she got out of the car?
A. When she got out the car?
Q. Yeah.
A. No, I, I never seen a female officer. The first two officers on the scene was two males.
Q. Would it surprise you this is a shorthaired female?
A. Yeah, I don't see no shorthaired female.
Q. Well, this is body cam we're looking at.
A. Oh, yeah. Well, I don't -- no.
Q. All right. So, seven minutes later you're out in the parking lot?
A. Correct.
Q. You don't disagree?
A. Yes, sir.
Q. And then, at 9:04, who's this you're out there

talking with?
A. That's Richard Hamilton. I think his name -- last name Hamilton or Hamilton Jacobs.
Q. Who else?
A. Oh, that's the dude named Lando.
Q. Lando?
A. Uh-huh.
Q. That's at 9:04. So, you've moved from the parking lot and this is State's 78. You moved from the parking lot out into the road?
A. Uh-huh.
Q. Okay, and then at 9:05, this is -- you -- you're kind of outside the parking lot in a little grassy area between the road and the parking lot?
A. Yeah, that's, that's right in front of my apartment, yes, sir.
Q. I'm sorry?
A. That's right in front of my apartment.
Q. All right. Who are you with?
A. Hamilton and Lando.
Q. What y'all talking about?
A. Well, Hamilton asked me -- was asking me what happened. I really wasn't -- Lando came from inside my house. So, he seen with his own eyes what happened and I was telling Hamilton what happened.

Q. State's 81 at 9:06. That's you outside by the road?
A. Uh-huh.
Q. Okay. At this point law enforcement's starting to saturate the area. They're all over the place, right?
A. Uh-huh.
Q. 9:06, this is you walking away with Lando. Is that correct?
A. Uh-huh.
Q. And this is State's 80. Why are you walking away from the scene?
A. That's me pacing back and forth.
Q. Okay. 86, State's 86, this is 9:05. Whose car are you leaning into there?
A. Oh, bruh stayed in front of the building. He stayed in front of my house. Like, I stay in 14-G. He stay in 14-D.
Q. What's his name?
A. I can't remember. I think Main Main or something like that. I can't remember.
Q. May May?
A. Main Main.
Q. You don't know his name?
A. No, sir.
Q. State's 85, you're leaning into the car. Are you

putting something in his car?
A. No, sir.
Q. What are you doing?
A. Talking to him because he stated he couldn't get to his house. That's why he was parked right there. The police was all up there. He couldn't even get into his front door. So, that's why he was right there asking me what happened.
Q. Okay. Let me ask you. Instead of talking with Lando or Richard Jacobs or May May ---
A. Main Main.
Q. Can you spell that?
A. Main. Like main.
Q. M-A-I-N?
A. Yeah.
Q. Oh.
A. Correct.
Q. Okay. Main Main?
A. Correct.
Q. Instead of talking with Main Main and Mr. Jacobs and Lando.
A. Correct.
Q. Why not go to the police and say ---
A. I had already been to the police.
Q. Okay. The first time you talked to police ---

A. Uh-huh.
Q. --- okay, you say I'm a resident?
A. I, I give them -- I tell them it's my house. I give them my name, my date of birth, and my phone number.
Q. Okay, and you just said nobody knows you're the shooter at this point. They just know that the shooter ---
A. Nobody except Hamilton. I told Hamilton because he one of the first people I talked to and that's probably about it.
Q. All right. Why not go to law enforcement and go hey, hey, whoa, I'm the shooter, I need to explain what happened?
A. Well, immediately when I start talking to the police and I gave them my information, they told me to step outside the tape.
Q. Okay. I'm the shooter. You don't think that would have gotten their attention?
A. Maybe.
Q. Maybe? Why not do that, though? Okay, but instead you're walking around. Who else did you talk to besides Lando, Hamilton, and Main Main? Who else did you talk to?
A. At that area right there?

Q. Just anywhere.
A. Oh. Nobody. I walked to Wesley's house, which is a mutual friend, and that's who I communicate with.
Q. You walked to Wesley's house?
A. Uh-huh.
Q. How far away is he from the crime scene?
A. He two parking lots back. He stay in building 26. I stay in 14.
Q. Okay. Did it occur to you that I just killed two people, I should probably stay here and let the officers know, and let me explain myself what happened?
A. Yes, sir, but I was so panicked and I needed people to talk to. So, I had to call my family and my friends. Well, all our friends that's all cool with all this so --
Q. And you ---
A. --- they can know how ---
Q. --- needed to figure out what you were going to say when you talked to law enforcement I guess?
A. No.
Q. No. So, it only took you about two hours before you finally come to the officers and go I'm the shooter?
A. No, sir. If I'm correct, it said an hour and 15 minutes.
Q. 10:46 sound right to you?

A. I don't know.
Q. Huh?
A. I don't know. I'm just going off what it said on the paperwork, sir.
Q. 10:47 AM, does that sound right?
A. It sound right about what?
Q. About the time you finally go in say I'm the shooter.
A. I can't remember. I can't say.
Q. But you're not going to disagree with me if the, if the time that interview started is 10:47, you agree with me that's when you finally said I'm the shooter?
A. About 10:40. Correct.
Q. Okay. 47.
A. But I had to get my peoples to go find the investigator first. So, you got to take away all that time before I got to the investigator. But yeah.
Q. You ---
A. We can go to ---
Q. You've seen those body cams. There must have been seventy officers right there. You had to go -- took you two hours to find one?
A. No. I said the head investigator. I got my cousin to go find the head investigator. That's how I talked to the guy that you got up here yesterday.

Q. He wasn't the head investigator. He was a gang task force unit.
A. But that's who they brought to me ---
Q. Okay.
A. --- or brought me to.
Q. But -- so 8:55 you killed these two guys, and 10:47 you're finally saying it was me, I shot him?
A. Yes, sir.
Q. So those two hours, I guess you're kind of trying to ---
A. But I had been let mostly people know what had happened.
Q. And not ---
A. The people who -- Hamilton, I believe Hamilton called the police as well after me. So, I had already communicated with him what had happened. I never denied being the shooter.
Q. No, but it took you two hours to come up with a story that you were eventually going to tell law enforcement.
A. No, sir.
Q. Didn't you ---
A. I told him the same exact story on the scene right there.
Q. Okay, and you felt like, after killing the two

guys, you needed to go to the store and get some cigarettes.

A. Yes, sir.

Q. Correct?

A. Because I just killed my two friends, correct.

Q. And nothing, nothing goes better after killing people than a cigarette, right?

A. Nah. I just was so stressed out and all the phone calls that I was having. It just stressing me out even more. So, I needed cigarettes, yes, sir. I smoke cigarettes. So ---

Q. Yeah.

MR. SCOTT: Before I forget, this is State's 77, 78, 79, 80, 81, 85, and 86 for admission into evidence.

MS. YOUNG: No objection.

THE COURT: They're admitted.

(PHOTOGRAPHS INDIVIDUALLY MARKED AS STATE'S EXHIBIT NUMBERS 77, 78, 79, 80, 81, 85, AND 86 RECEIVED INTO EVIDENCE.)

Q. All right, and during those two hours, you called Shakihla Smalls. There was fifteen calls between you two.

A. Yes, sir. I -- she never answered not one of them, though.

Q. Okay. All right. So, we got Wesley. We got

Hamilton Jacobs. We got Lando. We got Main Main. Do you remember who else you called and talked to?

A. I talked to my grandma about Dash that morning. I talked to my mama and Katerra. That's about it.

Q. All right, and, and you knew eventually you were going to have to come forward and tell I'm the shooter, right?

A. I never was running; I never was trying to hide.

Q. Well, you couldn't because Ieasha and Lando had seen you come out of the apartment.

A. Yeah, but -- okay. Yes, sir.

Q. Right? I mean, three people were alive in there at 8:54 and only one walks out and that's you and they see you walk out, correct?

A. Correct.

Q. So, you kind of knew I'm going to have to have a story, right?

A. No, this the same thing I been saying from the beginning, sir. My story never changed.

Q. Well, I, I heard that you told three different stories to the one guy.

A. Well ---

MS. YOUNG: Objection. Pitting.

THE COURT: The objection's overruled.

A. Uh-huh.

Q. Yeah.
A. But you also heard that same guy get up here and say that when he first opened the door, nobody else was inside the house but me. But your two witnesses, Wanda and Ieasha, said they was the first people in the house. So, how would that be true?
Q. Well, the body cam comes up, they'd already gone out and about.
A. Yeah, but he said he was one of the first people upstairs and he testified to that yesterday.
Q. Okay, and then when, when you get in, you speak with law enforcement, it's essentially I heard a noise.
A. Correct.
Q. I immediately think I'm getting robbed.
A. Correct. Not ---
Q. I heard ---
A. Not just heard any noise. I heard noises that sounded like my house is getting broken into.
Q. Okay, and this is two days after you thought that your home had gotten robbed of a gun?
A. Well, a gun had got stolen out of my home, yes. Correct.
Q. Okay, and that was concerning to you. I mean, you were texting ---
A. Not really concerning to me. In those same text

messages, I even said that it wasn't my gun. So, that had nothing to do with me. I didn't have no issue with the gun being stole. It wasn't mines.

Q. Well, let's see: Tell me why somebody stole one of our guns today.

A. Correct.

Q. I don't know who, though.

A. Exactly.

Q. Right?

A. Uh-huh.

Q. And she says: Y'all be having too many people in there.

A. Uh-huh.

Q. And then you say: Still trying to figure out who took the gun.

A. Uh-huh. Correct.

Q. So, you're telling me it wasn't a concern to you to figure out who took the gun?

A. That's only because me -- I was only saying that because multiple people -- everybody that was inside are friends that we cool with. So, if one of your friends that -- you think one of your friends took something and from inside your house, you want to be trying to figure out who took it if all those same people going to be around you.

Q. No, and that was my question. You were -- that was something of a concern to you to figure out who did it.

A. No, sir.

Q. It was or was not a concern?

A. It was a concern of Tonio's, though. It wasn't mines. So, I had nothing to do with that.

Q. You were concerned with figuring out who did it, though.

A. Correct.

Q. Okay.

MR. SCOTT: Your Honor, if, if -- I would just ask to this -- question the video. Maybe if we can proffer this outside the presence of the jury briefly.

THE COURT: All right, ladies and gentlemen, if you'll go to the jury room. Please do not discuss the case.

(THE JURY EXITS AT 3:20 PM.)

THE COURT: Mr. Scott, tell me again what you're trying to do or want to do.

MR. SCOTT: So, I had some of the lyrics that we interpreted. I listened to the track. He basically said I had totally misinterpreted them. In fact, I had added certain lyrics.

So, what I'd like to do is just proffer the video to him and, and see what he thinks. I don't want to

play it to the jury necessarily. But I, I want to be clear on, on what the lyrics are with him.

THE COURT: All right. What says the defense?

MS. YOUNG: I mean, Your Honor, we object to it coming in. Here is otherwise proffering the evidence. We don't have an objection to that.

THE COURT: We're not talking about it coming in. We're talking about what he proposed to do at this moment.

MS. YOUNG: Yes, and no objection to that then.

THE COURT: All right. Thank you.

You may proceed.

PROFFERED EXAMINATION BY MR. SCOTT

(WHEREUPON, AUDIO FILE IS PLAYED FOR THE COURT. AUDIO IS NOT TRANSCRIBED.)

A. Hey, make sure you turn this part up so you can hear what I'm saying. Y'all turn this part up so you can hear what I'm saying because this part you messed up on for sure.

(PLAY RESUMES.)

A. For sure. You understand I'm business forever and always. I slide like maybe that gangsta shit be make believe. You gone call the twelves. Okay.

Q. Okay: This gangsta shit that make me shoot these N

words.
A. So, that's not what I said?
Q. Yeah, that's what I heard.
A. I said: That gangster shit be make believe. Clear as day. I didn't say that, what you just said.
Q. Gangsta shit be make believe.
A. Gangsta shit be make believe. Start it over.
(PLAY RESUMES.)
Q. Shoot a what? I hear it. I, I keep hearing shoot.
A. I said:
That gangster shit be make believe. I shoot a nigga. He going to call the twelves.
Q. What's the twelves?
A. Police.
Q. Okay.
A. Okay.
Q. What does that -- what were you meaning by that?
A. If you shoot a nigga, he going to call the twelves. That shit ain't real to me.
THE COURT: All right. So, so we're not going to do cross-examination outside the presence of the jury.
MR. SCOTT: No, I have some, Your Honor.
THE COURT: All right.
MR. SCOTT: I think, I think, I think we can agree on a couple of these lyrics that I'll stick to with him.

And I, I don't intend on playing it, though.

THE COURT: All right. Well, we'll ---

MR. SCOTT: The song.

THE COURT: We'll go with what you all agreed with and then ---

MR. SCOTT: Okay.

THE COURT: --- let that be that.

MR. SCOTT: All right. Thank you, Your Honor.

THE COURT: All right. How many, how many more minutes or hours you have with this witness?

MR. SCOTT: Oh, I'm, I'm wrapping up, Judge.

THE COURT: Okay.

MR. SCOTT: So, maybe two minutes.

THE COURT: Okay. All right. We'll take a three minute break and then we'll bring the jury back.

You can take a break. Don't talk to anybody.

(OFF THE RECORD.)

THE COURT: Let's bring the jury.

(THE JURY ENTERS AT 3:35 PM.)

THE COURT: All right. You may proceed.

MR. SCOTT: Thank you, Your Honor.

Q. When you get up and walk down that hallway, this hallway, did you see whether or not your front door had been kicked open?

A. I really wasn't paying attention.

Q. But it's right in front of you ---
A. Uh-huh.
Q. --- when you walk down the hallway.
A. Yeah, I never.
Q. Did you ---
A. I never looked at the front door.
Q. What were you looking at?
A. Just blind. I was just blind, bruh.
Q. You were blind?
A. Uh-huh. Going to ---
Q. How?
A. --- the front. Staying close to the wall. I just staying close to the wall.
Q. You said you kind of do this, kind of do it here?
A. Yes, sir.
Q. All right. Let me ask you. Is that something that a reasonable person should do, blindly shoot into a room?
A. Well, if you think that you getting attacked, then yes, sir.
Q. Okay. Is it reasonable -- do you think would a reasonable person hearing a boom ---
A. And hearing ---
Q. --- in a living room ---
A. --- everything else that I heard, yes, sir.

Q. Okay. A reasonable person has two roommates and they hear a noise in the front ---

A. Uh-huh.

Q. --- is it reasonable for them to blindly shoot into the room knowing people are in there that could be their roommate?

A. It's reasonable after you assess the situation like I did in the room, yes, sir.

Q. Okay, and you think a full assessment ---

A. Will be listening to see if I heard voices that was familiar, yes, that's correct.

Q. Okay. I got it. So, now that's what Antonio Barnes thinks is a reasonable assessment, wait until you hear a voice you recognize, but if you don't, just blindly shoot, right?

A. Just go around there and protect yourself, yes, sir.

Q. Go around and you kill people who are just in there?

A. If they was intruders, yes, sir.

Q. Okay, but they weren't.

A. How would I be able to know that?

Q. Because -- I mean, there's a million ways really. You could have stayed back there. You could have called your roommates and said hey, man, is that y'all? You

could have called out Sam, Antonio, is that y'all? You could have gone in this door, okay, the kitchen, and you could have walked around to the other door and peeped out while maintaining cover. You could have done a million things. But you decide to blindly shoot.

A. Yeah.

Q. You hit them every time, by the way.

A. Uh-huh.

Q. Was that just luck on your part?

A. Yes, sir, I had already said that earlier. Yes, sir.

Q. Okay. So, what are you shooting at, the noise you're hearing?

A. Yes, sir.

Q. Okay, and ---

A. And I was using the wall because I was expecting people to have guns around there. So, yeah.

Q. Because that's what you see in *Call of Duty*.

A. No. That's just what happens in real life. When somebody break into your house, they coming in with a gun.

Q. Which has never happened to you, though, in that apartment.

A. No, sir. But we -- my friends did just get robbed at gunpoint. So, that's what came to my mind.

Q. But you weren't there, though, were you?
A. No, but I couldn't ---
Q. And ---
A. I could have easily been.
Q. Okay, but you weren't, though, were you?
A. No, sir.
Q. And it didn't happen in your apartment, did it?
A. Hu-uh.
Q. Is that a yes or no?
A. No, sir.
Q. Okay, but you're a barber with a cutter. You watch them burn like alcohol.
A. That's what I said in my song, yes, sir.
Q. So, just to conclude, you only have to be a little bit scared before you begin shooting people, correct? It's what you testified to earlier.
A. Yes, sir, I said that earlier.
Q. All right, and you don't have to be certain that you're in danger before shooting at people and killing them?
A. Yeah. If you believe that they were intruders, you don't have to.
Q. Okay. Would you, would you advise me tonight if I hear a boom in my front living room to just go in there blazing with guns?

A. Nah. To be honest, sir, I wouldn't advise you to do anything.
Q. Okay, but you just said that's what reasonable people should do.
A. Uh-huh. If you believe that you getting your home intruded, yes, sir.
Q. Okay. So, if I hear ---
A. You didn't say if you was getting your home, home intruded. You said if you just heard noises.
Q. But you weren't getting your home invaded.
A. Well, it sounded like it.
Q. Well, you base that on the TV falling over?
A. And the boom that I heard ---
Q. And the boom.
A. --- coming from the front room, yes, sir, and all the movement that I heard from the feet, yes, sir.
Q. Okay, and one last time, Antonio.
A. Uh-huh.
Q. I want you to look at this jury in the face, and I want you to tell them how Mr. Griffin got this wound where a gun was pressed against his head ---
A. Uh-huh.
Q. -- and the trigger was pulled.
A. Yes, I don't remember doing that. I came around shooting exactly like I demonstrated earlier, and I

don't know how that happened.
Q. Well, you demonstrated. You didn't get down and press it against somebody's head?
A. No, sir, I didn't.
Q. Okay.
A. So, that's not what I did.
Q. That's not what you did?
A. No, sir.
Q. But you've got no explanation for that?
A. No, sir.
Q. State's 57, do you see that?
A. Yes, sir.
Q. And you see the black ring around the bullet hole, right?
A. Yes, sir.
Q. Okay. You're, you're not denying that's there, right?
A. Yeah, I'm not denying that.
Q. And you heard that pathologist who's done thousands of autopsies ---
A. Uh-huh.
Q. --- talk about that?
A. I heard him say a lot of things yesterday.
Q. Okay.
A. Uh-huh.

Q. All right. Did you -- do you dispute anything he said?
A. No. He disputed some of his own things that he said, but, no, I don't dispute anything that he said. I'm not a specialist.
Q. You're not a medical doctor, right?
A. No, sir.
Q. Okay. So, you heard how he described those contact wounds are identified, right?
A. Yes, sir.
Q. Okay, and you're not going to give this jury any explanation how Mr. Griffin had that gun ---
A. Nah, I ---
Q. --- shot in the back of the head?
A. My explanation earlier was when I was showing you how it happened. I don't -- no, sir, I don't know how that happened. That's what the medical examiner said. So, that's what we going with. But I don't remember doing that.
Q. Okay. On your demonstration, you didn't get down and put it against somebody's head?
A. I didn't get down. The medical, the medical examiner didn't say that I got down on my knees and did it. He ain't say that.
Q. Well -- and I, I know. I'm waiting for you to tell

me how it happened.
A. I told you how it happened. I explained to you when I just demonstrated it to you. That's what happened.
Q. At what point did you press the gun down to his head?
MS. YOUNG: Your Honor, asked and answered.
THE COURT: The objection's sustained.
Q. All right, and you saw that, right? You remember that stippling? Look at it.
A. Yes, sir.
Q. Do you remember that?
A. Uh-huh.
Q. 6 inches to 3 and a half feet.
A. Uh-huh.
Q. So, you're not disputing that you were that close to Antonio Dash when you were shooting him?
A. Yeah, it wouldn't be -- it would be possible for them not to been that close from the way that I just showed you when I demonstrated it. If -- from shooting -- if you holding your hand out from the ground, it wouldn't even be 3 and a half feet from inside the house. So, yeah, I'm not 7-feet tall, sir. I'm only 6-foot. So, that would be right around the exact amount how far my arm, arm would be if I'm aiming

it.
Q. Okay. So, you don't dispute you were at close range when you were shooting them?
A. Yes. I was inside the house.
Q. And you don't dispute, though, that you pressed the gun up against Eric's head before you pulled the trigger?
A. Yeah, I don't remember doing that.
Q. You don't dispute it? I'm sorry. Do you dispute that or not dispute it?
A. No, I don't dispute it, but I do not remember doing that.
Q. Okay. That's just the one thing you've forgot, though. I wonder why.
A. That's just the one thing that I know, sir. I'm telling you exactly what I seen, exactly what happened. I don't have no reason to lie.
Q. Well, I'm just thinking I heard earlier you were talking about, well, I remember Katerra put the shirt over the gun.
A. Correct.
Q. Then he moved over where the gun was.
A. Correct.
Q. My brother called at 2:30. I remember that and my brother called ---

A. Because that's ---

Q. --- at 2:30.

A. That's his normal -- that's his normal routine. He calls and asks for a ride probably, like, ten, fifteen minutes before he go to work. He do this every day. So ---

Q. Okay. Let me speak real quick, though.

A. Uh-huh.

Q. And then you remembered Sam got up to brush his teeth. I remember that.

A. Uh-huh.

Q. And then I remember they left. And two to three minutes went by and then Sam said the gun was missing. Why do you remember all those details?

A. I didn't -- I never said two, three minutes before Sam sat -- left or sat down. Whatever you just said is no -- I didn't say that. I said when E came back to the house, it was two, three minutes before Katerra left and E sat in the same spot that Katerra left. And we probably left probably like -- I can't really say. But I know my little brother had to be to work at 3 o'clock and Sam the one who took him. That's what I can vouch for.

Q. You remember all those details, and you remember Sam ---

A. Yes, sir.
Q. --- going to brush his teeth.
A. Uh-huh.
Q. You remember putting the shirt over a gun.
A. Yes, sir.
Q. And you remember who all was there.
A. Uh-huh.
Q. But you don't remember this one thing I'm asking you about over and over?
A. Yeah, because, because I can't vouch for that. What I can tell you -- what I can vouch for is how I came around the corner shooting, and that's exactly what happened.
Q. Okay, and, I mean, did you, did you try and render any aid to the guys after you ---
A. No, I wasn't -- I wasn't going to touch them. I was going to wait til the police got there. But his mom touched him and moved Eric off the top of Antonio. So, that's why and that's how -- why they was positioned like that.
Q. Okay. You, you just kind of got out of the apartment as quick as you could?
A. No, sir.
Q. How quickly did you try to get out the apartment?
A. I didn't just leave out of the apartment until

multiple people started coming inside.
Q. Okay, and that's when you went off to go get a cigarette?
A. That's when I walked downstairs. That's correct.
Q. All right.
MR. SCOTT: Thank you.
THE COURT: Any redirect?
MS. YOUNG: Thank you, Your Honor. Your Honor, as a brief housekeeping matter, the court reporter let me know that I inadvertently forgot to admit Defendant's Exhibit 111, 112, 113, 117, 116, 115, and 114 earlier during my direct. I don't believe that Mr. Scott has any objection.
MR. SCOTT: No objection, Your Honor.
THE COURT: They're admitted.
(PHOTOGRAPHS INDIVIDUALLY MARKED AS DEFENDANT'S EXHIBIT NUMBERS 111, 112, 113, 114, 115, 116, AND 117 RECEIVED INTO EVIDENCE.)
REDIRECT EXAMINATION BY MS. YOUNG:
Q. Antonio, was this a normal day for you?
A. No, not after what happened, no, ma'am.
Q. Were you in shock?
A. Yes, ma'am.
Q. And when -- you told Mr. Scott you don't dispute the contact wound.

A. No, ma'am, but I do not remember doing that.
Q. You do not remember walking up and putting, putting the gun to his head?
A. No, ma'am.
Q. But what you did demonstrate was coming around the corner with the gun and firing and getting closer to them as you fired?
A. Correct.
Q. And it's a pretty small apartment, right? It's not big.
A. Yes.
Q. And the area isn't very big.
A. Yes.
Q. And I think Mr. Scott asked you about getting -- you know, could you tell that your door was kicked in. Your door automatically shut, right?
A. Yes.
THE COURT: You can't ask, ask questions and then answer your questions. So, let's pose questions.
Q. Did your door automatically ---
THE COURT: Do not lead the witness.
Q. Did your door automatically shut after you opened it?
A. Yes.
Q. Did you think that your door was shut when you were

coming down the hallway?
A. Yes.
Q. But you don't know whether it had been kicked in -- you -- do you know whether it had been kicked in?
A. No, ma'am.
Q. And I think you said earlier you -- did you call 911 at 8:55?
A. Yes.
Q. And you know that you're on a responding officer's body-worn camera at 9:02, right?
A. Yeah.
Q. You saw that picture earlier.
A. Uh-huh.
Q. Do you know -- did you know that she was the first responding officer on scene?
A. No.
Q. Okay. The two first officers you saw, what did they look like?
A. It was a Hispanic guy and a white guy.
Q. Okay. You did not see a -- did you see a female, short hair ---
A. No, I don't remember seeing her.
Q. So, when you saw the two officers, the white guy and the Hispanic guy ---
A. Right.

Q. --- what did you do?
A. I walked over to them and I gave them all my information.
Q. Okay. Now, Tony, we heard about some rap lyrics.
A. Correct.
Q. Are you a rapper?
A. Yes.
Q. Do you enjoying making music?
A. Yes.
Q. Why?
A. Just because I just like to do it. That's a good way to express myself.
Q. Is it like your art?
A. Yes.
Q. Does it provide you some outlet for your -- what's going on with you?
A. Somewhat.
Q. Do you rap about things that are true?
A. Sometimes.
Q. Do you rap about things that are not true?
A. Sometimes.
Q. Do you -- I mean, I think Mr. Scott asked about pictures with you and some of your friends holding guns and you said, you know, your, your friend gets a new gun, you take a picture with it. Do you remember

telling him that, right?
A. Correct.
Q. And do rappers sometimes pose with guns?
A. Correct.
Q. Do rappers act in a bravado sort of way?
A. Yes. You have them in your videos. It's just part of your image sometimes. It depends on what type of music that you make.
Q. And you've only ever -- let me ask you this. How many guns have you owned at one time?
A. The maximum amount of guns I owned at one time is two.
Q. And you -- I think Mr. Scott asked you about not reporting one stolen. I mean, you're aware -- are you aware that they found a receipt from Academy Sports for a .40 caliber Smith & Wesson in your apartment?
A. Correct.
Q. What happened to that gun?
A. Well, I, I had to report it stolen.
Q. When did it get stolen?
A. Prior to 2000 -- March, 2018.
Q. And did the police come out to your apartment?
A. Yeah, they -- well, they came to Wesley house because that's where I was at when I reported it stolen.
Q. Okay. Took a report?

A. Yes.
Q. So, if you had a gun -- when you have a gun stolen, you call and report it to the police?
A. Yes.
Q. Are you able to lawfully carry a gun?
A. Yes, ma'am.
Q. And you can buy a gun legally?
A. Buy it out the store, yes, ma'am.
Q. I think Mr. Scott was -- he tripped you up a little bit with earlier with the selling weed question.
A. Uh-huh.
Q. Do you sell or did you, at the time, sell weed?
A. Yes.
Q. Were you making a lot of money doing that?
A. No, ma'am.
Q. Did you sell weed in order to support your habit?
MR. SCOTT: Objection. Leading.
THE COURT: Objection is sustained.
Q. Why did you sell weed?
A. Just to support my habit. I smoke a lot. So, I don't feel like I should just keep going to the weed man and spending a hundred dollars or $50.00 because it's not going to last.
Q. I think you also talked about some -- he talked with you about some calls that you made to Shakihla ---

A. Correct.
Q. -- or Shakihla. Do you know -- do you remember calling her several times?
A. Yeah.
Q. Okay, and I think that you told Mr. Scott that she didn't answer.
A. Yes, she didn't.
Q. Do you remember telling investigators during your interview that you were trying to call her to find out what happened to the gun?
A. Yes.
Q. And I believe Mr. Scott asked you about being paranoid.
A. Uh-huh.
Q. Was that your words?
A. I don't believe so.
Q. Were you afraid on this day?
A. Yes.
Q. But you don't -- you're -- are you generally paranoid?
A. No.
Q. Did Mr. Scott put that mouth in -- that word in your mouth?
A. Yes.
Q. He also asked you about being a little bit scared.

Were you a little bit scared that morning?

A. No.

Q. How scared were you?

A. I was scared as hell.

Q. And he asked you about certainty. Were you a little bit certain that you were in danger ---

A. Yes.

Q. -- or did you feel, like, certain that someone was breaking into your house at the time?

A. I just knew I was going to die if they made it to the back room. That's all I could tell you.

Q. And I asked you this earlier. Are you sorry for what happened?

A. Yes, ma'am.

Q. Do you recall giving an interview to Investigator Gilliam? I think we talked about it on direct. It was about six hours.

A. Correct.

Q. And you -- do you remember sitting in there and making some phone calls?

A. Yeah, I called my mom. I talked to a lot of people in the investigation room.

MS. YOUNG: Your Honor, at this time I'd like to play an excerpt from that -- I'd like to play an excerpt from that video.

THE COURT: What says the state?

MR. SCOTT: The objection would be to relevance. My prediction is that they are going to show an excerpt of him getting emotional. They can ask him about the thing. I do the same thing. But it's already in evidence. That's fine. But it's opening the door for recross on this if they want to keep talking about his emotional reaction to this.

THE COURT: What says the defense?

MS. YOUNG: Your Honor, under 801(d)(1)(A) -- I'm sorry, (1)(B), it's consistent with Mr. Barnes's testimony that has been attacked. Mr. Scott brought his remorse into play. Mr. Scott attacked his consistency about what he told people. He told -- brought up Mr. Archie saying that he said three different things. This is a prior consistent statement after his -- after their -- to express an implied -- express or imply a charge against the declarant of recent fabrications or improper influence.

THE COURT: What says the state?

MR. SCOTT: The direct examination question you recall of remorse and how he's sorry he did it, I crossed him briefly on that. But I raised no additional issues as to his remorsefulness. They're, they're treading over ground they covered during the direct.

THE COURT: I sustain the objection.

MR. SCOTT: Thank you, Your Honor.

MS. YOUNG: Your Honor, we'd like to proffer it.

THE COURT: Does -- is it -- it will be marked as a State's Exhibit or a Defense Exhibit, Exhibit and you may proceed.

MS. YOUNG: Your Honor, it's Defense Exhibit 108.

Q. Antonio.

MR. SCOTT: Your Honor, I'm just confused. If, if the objection was sustained and now they're playing the video.

MS. YOUNG: We're -- no, no. We just want to enter it as a Court's Exhibit ---

MR. SCOTT: Oh. Oh.

MS. YOUNG: --- for a proffer -- proffered it. I'm sorry. Court's Exhibit.

MR. SCOTT: I saw the screen. That's all.

(A PAUSE.)

(TEXT MESSAGE MARKED AS DEFENDANT'S EXHIBIT NUMBER 128 FOR IDENTIFICATION.)

MR. SCOTT: So, Your Honor, this, this is pertaining to something -- nothing new that was raised in cross-examination. This is a text they're purporting to enter.

THE COURT: Pardon?

MR. SCOTT: There's a text message they're purporting to enter. But I don't see that it pertains to any new evidence or any new information brought up during cross-examination.

MS. YOUNG: Your Honor, he asked on cross-examination about a text message exchange that Tony was having about our gun, and this is a text message where Tony said not his gun. So, it directly addresses something he brought out on cross.

THE COURT: I overrule the objection.

Q. Tony, what does that text message right there say?

A. It had to be one of your suppose to be friends. I don't know. It wasn't my gun. But still, how the fuck.

MS. YOUNG: Your Honor, at -- I probably should have admitted it first, but that's Defense Exhibit 128.

THE COURT: Proceed.

(TEXT MESSAGE MARKED AS DEFENDANT'S EXHIBIT NUMBER 128 RECEIVED INTO EVIDENCE.)

Q. Tony, can you tell me about the tattoo you have behind your ear?

A. Oh, I got a tattoo right there that say long live T.O.

Q. What else is it?

A. Two bird.

Q. And what do those birds represent?
A. That is one for T.O. and one for my peoples.
Q. Are you sorry for what happened?
A. Yeah.
MS. YOUNG: Beg the court's indulgence.
(A PAUSE.)
MS. YOUNG: Nothing further, Your Honor.
THE COURT: Any further questioning of this witness?
RECROSS EXAMINATION BY MR. SCOTT:
Q. You sorry that you're here today. I know that, right?
A. No, sir.
Q. You're not sorry? You're not sorry?
A. You asked me was I sorry if I was here. I responded to your question no.
Q. You sorry you got arrested for the murder of these two, aren't you?
A. No, sir.
Q. No, you're not. You think you deserve to get arrested for it then?
A. No, sir.
Q. Okay. You're so sorry and you're so remorseful that you put pen to paper and then you sing about killing these two, and you don't even ask the family for

permission. You don't even tell them you're about to do this for clout.

A. I didn't put pen and paper -- pen to paper and write a song about killing them.

Q. You put ---

A. In the song I referenced my homeboy, which is like my brother. I -- did I have to ask them to get his tattoo name -- his name tattooed on my neck? I didn't. That being my friend, regardless of what his people have to say. So, that's what I'm saying. I can't answer that, sir.

Q. You don't think that's disrespectful not to ask ---

A. No, sir.

Q. --- T.O.'s mom ---

A. That's really ---

Q. Let me ---

A. --- my friend.

Q. Let me ask you a question. To ask T.O.'s mom, before you put on YouTube details about killing her son ---

A. No, sir.

Q. --- or Ms. Wanda Griffin? You don't think that's disrespectful ---

A. No, sir, them really my friend.

Q. --- to put on YouTube videos about killing her son

point blank range? You don't think that's disrespectful?

A. No, sir, because that's not what I said in the song. I said nothing -- I didn't use E name not one time, and we had already talked about this in the cross earlier. You didn't say that. So, I didn't say nothing about Eric Griffin at all in that song. You -- we already discussed that and I spoke about T.O. in that song because that's like my brother, and I even said but T.O. like my brother in the song. So, I don't see how you confused with that.

Q. You get some kind of clout when people know you kill people?

A. Clout for what? These my friends. I never asked for clout for this.

Q. You get some views, though, when you post videos.

A. No, I got views before this. So, I don't even need that.

Q. All right. How many other rap songs you put out since then?

A. I done put out most of the rap songs. I can't really sing.

Q. All right. So sorry you, write about killing these two?

A. Never wrote a song about killing them.

Q. Sounds real remorseful.
A. I never wrote a song about killing them.
Q. Who sang it?
A. Huh?
Q. Who sang it?
A. I, I rapped the song.
Q. What?
A. I rapped it, the song, yes, sir.
Q. Okay, and you downloaded it or uploaded it to YouTube, right?
A. Correct.
Q. And then you put it out there for the world to see?
A. Uh-huh.
Q. And you never asked Antonio -- Tonio's mom or Ms. Wanda Griffin ---

MS. YOUNG: Objection. Asked and answered.

A. I didn't speak on Eric name in that song anyway period. So, I didn't have to ask her nothing. I didn't speak on his name and Antonio's like my brother. Once again, I already said that. That's my real friend. So, I didn't get -- ask them for permission to get his name tattooed on my body. So, I feel like I have to do that to do a song.
Q. Okay.
A. Well, I clearly said that's like my brother and how

much I love him.
Q. Yeah.
A. I don't see how that was the issue.
Q. And you, you gone cut him down.
A. I never said that. I never said I was going to cut Antonio down. I said T.O. like my brother.
Q. Tell me about the thing about: I'm going to make them fall like leaves ---
A. Yes, that ---
Q. --- and you're not talking about leaves.
A. Yeah, that was the next line, correct.
Q. All right: Everybody say they ---
A. The next two lines to be exact.
Q. All right.
A. We listened to it earlier.
MS. YOUNG: Your Honor, I'm going to object. This is exceeding the scope of my redirect.
THE COURT: I sustain the objection.
Q. All right, and in the same song you're talking about these guys:

> I'm a barber with a cutter. Watch me burn them like alcohol.

A. First of all, it's a rap song. So, I don't know why you making every song -- every line in the song has to be about them when I clearly said one line that was

about them, which says T.O. like my brother. All the rest of that is speculations on your part. You don't know what I was talking about.

MS. YOUNG: Your Honor, I'm going to object again. It's outside the scope of my redirect.

THE COURT: Is that the next question or to the last question?

MS. YOUNG: Last -- to the last question but I believe he's about to follow up.

THE COURT: Well, it was asked and answered.

Q. So, so, you were remorseful, though, and you're sorry?

A. Yes, sir, that's my dawg.

Q. You going to put out any more rap songs about killing them?

A. I didn't put out rap songs about killing them.

Q. Okay, but you talk about killing people in the rap song with them.

A. If that's what you want to say, yes, sir.

Q. There's no -- you have any good reason why they're not here right now, Antonio Dash and Eric Griffin, alive and well?

A. Well, like I told you before, I thought my house was getting broke into. I thought my home was being invaded. So, that's why they not here. I wish they was

but ---

Q. What did they do to deserve to die that day?

A. Well, they didn't do nothing. I thought my house was being broken into, but I wasn't the cause of that, so I can't say.

Q. You weren't the cause of killing them?

A. I wasn't the cause of thinking that my house was being broke into. I didn't bust a hole in the wall; I didn't knock my TV down. All that happened before I came out the room. So, I don't know what was the cause of that.

Q. Are you saying they deserved to die because they may have done that?

A. The intruders that I thought was in my house had deserved to die.

Q. So, your testimony is Eric Griffin and Antonio Dash did not deserve to die that day.

A. Correct.

MR. SCOTT: Thank you.

THE COURT: You may step down.

MS. YOUNG: Your Honor, before we leave the witness, we have a matter of law.

THE COURT: You may step down.

(THE WITNESS EXITS THE STAND.)

THE COURT: Call your next witness.

MS. YOUNG: The defense would call Sara Goodman, call Sara Goodman.

THE COURT: While she's coming up, counsel approach.

Everybody stand for a moment.

(THE FOLLOWING CONFERENCE IS HELD AT THE BENCH OUTSIDE THE HEARING OF THE JURY.)

MS. YOUNG: Well, Your Honor, I'd like to play the video proffered. Mr. Scott got up on recross ---

THE COURT: Well, you have direct, cross, redirect, cross.

MS. YOUNG: Your Honor.

THE COURT: That's it for the witness. You can't put up evidence during the end of testimony of the witness.

MS. YOUNG: During his recross, he directly attacked his remorse again right after we had just brought that up.

THE COURT: That's it.

MS. YOUNG: And, Your Honor ---

THE COURT: That's the way the process is.

MS. YOUNG: --- the video goes directly to that issue.

THE COURT: They get the last word on that with cross-examination. You don't get a chance to -- he's

still arguing the same thing. Let me ask him one question. Let me introduce more evidence through the witness. He's through his cross-examination for the second time. That's the end of it for that witness. You don't get a chance to get a third bite at the apple.

MS. YOUNG: Well, Your Honor, he went right back ---

THE COURT: Okay, that's not a real matter of law. So, we're going to proceed. At the end of the day, you can put whatever else you want on the record. But that's not a matter of law.

MS. YOUNG: Thank you, Your Honor.

(END OF CONFERENCE AT THE BENCH.)

THE COURT: You may be seated.

SARA GOODMAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK OF COURT: Please have a seat. State your full name for the record.

WITNESS: My name is Sara Goodman. Last name is G-O-O-D-M-A-N.

VOIR DIRE EXAMINATION BY MS. YOUNG:

Q. Good afternoon, Ms. Goodman.

A. Afternoon.

Q. Where do you work?

A. I work at the South Carolina Law Enforcement

Division, commonly referred to as SLED.

Q. And what is your title?

A. I am a forensic scientist assigned to the DNA casework department.

Q. How long have you worked there?

A. Approximately seven years.

Q. And what are some of your duties at SLED?

A. I do DNA casework analysis. So, I will receive items of evidence and known standards from law enforcement agencies throughout the state and perform requested DNA analyses on those items, write up a report based on my findings, and testify in court as necessary.

Q. And where did you attend school?

A. I attended school at Erskine College where I received a bachelor of science in biology, and I also have a master's of science in forensic science from Arcadia University in Pennsylvania.

Q. Okay.

MS. YOUNG: Your Honor, at, at this time I would offer Sara Goodman as an expert in DNA analysis.

MR. SCOTT: Your Honor, without objection.

THE COURT: She's so qualified.

DIRECT EXAMINATION BY MS. YOUNG:

Q. Can you please tell us what STRmix and how -- is and how it's used?

A. Yes. STRmix is a statistics or mathematics computer program. It is used after our analyses. So, when we create DNA profiles from items of evidence, and then from known standards, to give a weight to our conclusions, we will calculate statistics. So, STRmix is the computer program that helps us calculate those statistics.

So, we will put in the DNA profiles from the evidence. It will break it down into the different possibilities of DNA profiles or contributors to that profile, and we will then verify that the program functioned correctly, and then we will input DNA profiles from known standards and it will calculate the statistic for each of those known standards.

Q. And were you asked to analyze DNA in this case?

A. Yes, I was.

Q. What, what were you given to analyze?

A. So, I was given four known standards, which were Buccal swabs from four different individuals -- Antonio Dash, Eric Griffin, Antonio Barnes, Jr., and Shakihla Smalls -- and then I was also given some items of evidence. I had left-hand and right-hand fingernail scraping from Eric Griffin, left-hand and right-hand fingernail scrapings from Antonio Dash, swabs from the exterior of a .9 millimeter cartridge casing, and then

an impact collection from Items 14, 27 through 30, and 32, which were .9 millimeter cartridge casings.

Q. So, I'm going to walk through your report now a little bit, okay?

A. Okay.

Q. Direct your attention to Item Number 9. What, what -- or 9.1 I guess. What, what is Item 9.1?

A. Item 9.1 is the left-hand fingernail scrapings from Eric Griffin.

Q. And what did you do with those scrapings?

A. So, I took it through our normal processes to develop a DNA profile off of that item. Once I did my analysis for that DNA profile, I calculated likelihood ratios using STRmix.

Q. And how do you do that?

A. So, calculating likelihood ratios is what the computer program, STRmix, that's the type of statistic it is calculating. And what a likelihood ratio is, is that it's comparing two different possible scenarios to explain the DNA profile. And the result tells you which of those is more likely.

Q. And what were your findings as to Item 9.1?

A. So, for my first proposition set, which is -- each proposition set is one of the sets of likelihood ratios. So, typically we do one for each known standard that we

have in the case. We can sometimes group them together as well.

But for the first proposition set, the DNA profile was interpreted as a mixture originating from three individuals. Eric Griffin is contributing to the mixture. So, the first scenario is that Eric Griffin, Antonio Dash, and an unidentified, unrelated individual contributed to the mixture versus the second scenario of Eric Griffin and two unidentified, unrelated individuals contributed. The result is that the DNA profile is approximately 13 trillion times more likely is Eric Griffin, Antonio Dash, and an unattended -- excuse me, unidentified, unrelated individual contributed to the mixture than if Eric Griffin and two unidentified, unrelated individuals contributed.

For Proposition Set 2, it is similar to set one in the difference scenarios that it's setting up. So, again, Eric Griffin is contributing to this three person mixture. And then, for this one, Eric Griffin, the person of interest, and an unidentified, unrelated individual contributed to the mixture. Person of interest for us is just anyone whose known standard has been submitted for analyses. And then the second scenario again is Eric Griffin and two unidentified, unrelated individuals contributed. And the result for

that is that Antonio Barnes, Jr., and Shakihla Smalls are excluded as contributors to the mixture under the listed propositions.

Q. Okay. So, I'm going to boil that down a little bit. So, is it fair to say that it's likely that there's DNA from Antonio Dash in the fingernail scrapings of Eric Griffin's left hand?

A. Yes, that -- it is likely that Eric Griffin, Antonio Dash, and an unidentified individual contributed versus if it were two unidentified and Eric Griffin.

Q. Okay. I'm going to move you to Item 9.2. What was that?

A. That was the right-hand fingernail scrapings from Eric Griffin.

Q. And were you able to get a sufficient profile for the comparison?

A. No, the partial DNA profile developed was insufficient for interpretation.

Q. So, moving then to Mr. Dash in 10.1.

A. Uh-huh.

Q. What is Item 10.1?

A. Item 10.1 is the left-hand fingernail scrapings from Antonio Dash.

Q. Okay. What were your findings for that?

A. For this item, a DNA profile suitable for

comparison was developed and likelihood ratios for this profile were calculated using STRmix. For this item, I had three different proposition sets, all very similar again.

But for the first proposition set, the DNA profile was interpreted as a mixture originating from two individuals. The first scenario is that Antonio Dash and an unidentified, unrelated individual contributed versus if two unidentified, unrelated individuals contributed. And the result is that the DNA profile is approximately 12,000 times more likely if Antonio Dash and an unidentified, unrelated individual contributed than if two unidentified, unrelated individuals contributed.

For Proposition Set 2, again, it's a mixture originating from two individuals. This time I am assuming that Antonio Dash is contributing to the mixture based off of the first proposition set. So for this set, the scenarios are that Antonio Dash and Eric Griffin contributed to the mixture versus if it's Antonio Dash and an unidentified, unrelated individual. And that result is that the DNA profile is approximately 2.6 octillion times more likely if Antonio Dash and Eric Griffin contributed to the mixture than if Antonio Dash and an unidentified, unrelated individual contributed.

And then for the final proposition set, again, assuming that Antonio Dash is contributing, the scenarios are that Antonio Dash and the person of interest contributed versus Antonio Dash and an unidentified, unrelated individual. And the result for that is that Antonio Barnes, Jr., and Shakihla Smalls are excluded to -- as contributors to the mixture under the listed propositions.

Q. Okay. So, again, just to boil it down a little bit. This is Antonio Dash's left hand. And so it's likely that there's DNA from Eric Griffin under the -- in the fingernail scrapings of Mr. Dash's left hand?

A. Correct versus if it were an unidentified individual.

Q. And, again, just like on the first one, Mr. Barnes and Ms. Smalls were eliminated as contributors?

A. That's correct.

Q. And then moving to Item 10.2. What is that?

A. That is the right-hand fingernail scrapings from Antonio Dash.

Q. And what did you find with -- what were your results with that?

A. So, for this item, a DNA profile suitable for comparison was developed and likelihood ratios were calculated using STRmix. For the first proposition set,

the DNA profile was interpreted as a mixture originating from two individuals. The first scenario is that Antonio Dash and an unidentified, unrelated individual contributed versus two unidentified, unrelated individuals. And the result is that the DNA profile is approximately 170 times more likely if Antonio Dash and an unidentified, unrelated individual contributed versus if two unidentified, unrelated contributed.

The second proposition set is comparing the scenarios of Eric Griffin and an unidentified, unrelated individual contributing versus two unidentified, unrelated individuals, and that result is that the DNA profile is approximately 1.6 octillion times more likely if Eric Griffin and an unidentified, unrelated individual contributed versus two unidentified, unrelated individuals.

The third proposition set is comparing whether Antonio Dash and Eric Griffin contributed to the mixture versus two unidentified, unrelated individuals, and that result is that the DNA profile is approximately 720 octillion times more likely if Antonio Dash and Eric Griffin contributed than if two unidentified, unrelated individuals contributed.

And then I have an extra statement here that says that the LR for Proposition Set 3 was calculated to

confirm that the mixture can be explained by the contribution of DNA from all individuals listed under HP. Due to the disparity in the individual LRs between the contributors for this item, it is recommended to put more weight on the results of Proposition Set 1 rather than the, the result of Proposition Set 3 when considering Antonio Dash as a possible contributor to the mixture.

And then for my final proposition set for this item, I'm comparing whether the person of interest and an unidentified, unrelated individual contributed versus two unidentified, unrelated and the result is that Antonio Barnes, Jr., and Shakihla Smalls are excluded as contributors to the mixture.

Q. Okay. So, again, on Antonio Dash's right hand, it was fair to say that there's very likely DNA from Mr. Griffin in Mr. Dash's fingernail scrapings?

A. Yes, there is very strong likelihood that Eric Griffin and an unidentified individual contributed versus two unidentified.

Q. And, again, Ms. Smalls and Ms. Barnes were eliminated ---

A. Correct.

Q. --- as contributors? Okay, and I think then you did one more thing, which was a 31.1, Item 31.1?

A. Correct.
Q. What was that?
A. That was swabs from the exterior of a .9 millimeter cartridge casing.
Q. Okay. Did you -- what did you find on that?
A. For this item, a DNA profile suitable for comparison was developed and likelihood ratios were calculated using STRmix. This profile was interpreted as a mixture originating from two individuals for all of the proposition sets.

For the first set, Antonio Dash and an unidentified, unrelated individual contributed versus two unidentified, unrelated individuals are in the scenarios, and the result is that the DNA profile is approximately 62 quintillion times more likely if Antonio Dash and an unidentified, unrelated individual contributed versus two identified individuals.

For the second proposition set, in comparing whether Eric Griffin and an unidentified individual contributed versus two unidentified individuals, and the result is that the DNA profile is approximately 84 trillion times more likely if Eric Griffin and an unidentified individual contributed versus two unidentified individuals.

And then for Set 3, I'm comparing whether Antonio

Dash and Eric Griffin contributed to the mixture together versus two unidentified individuals. And that result is that the DNA profile is approximately 280 undecillion times more likely if Antonio Dash and Eric Griffin contributed than if two unidentified, unrelated individuals contributed.

And then for the final proposition set, I'm comparing whether the person of interest and an unidentified individual contributed versus two on unidentified. And the result is that Antonio Barnes, Jr., and Shakihla Smalls are excluded as contributors to the mixture.

Q. And that was a really big number, the 280 undecillion. Would it surprise you to learn that that -- you know, given your findings, would it surprise you to learn that that cartridge casing had been located in his blood?

A. That would not be unsurprising, no.

Q. And just because DNA is present, you don't know how it -- do you know how it got there?

A. I do not.

Q. Okay, and when you get fingernail scrapings, what kinds of -- what kinds of things do people have in their fingernails that might provide DNA?

A. Any bodily fluids have DNA to them. So, if they

have anything like that under their fingernails. Also your skin cells have DNA as well. So, just the skin cells from under the fingernails would have DNA. They could also have DNA from any item that they touched underneath their DNA -- or, excuse me, underneath their fingernails.

Q. Could you find tissue under there?

A. You could, yes.

Q. And when you get fingernail scrapings, do you have any way of knowing what the source of the DNA is that you're testing?

A. Not typically, no.

Q. Did you here?

A. I did not. We received incident reports sometimes, but as far as determining when or where the DNA came from, I can never say that.

Q. But it -- is it fair to say that your report finds that Eric Griffin and Antonio Dash had each other's DNA under their fingernails?

A. There was a likelihood of that, yes.

MS. YOUNG: Beg the Court's indulgence.

(A PAUSE.)

MS. YOUNG: Nothing further at this time, Your Honor.

THE COURT: By the state.

MR. SCOTT: Just briefly, Your Honor.

CROSS-EXAMINATION BY MR. SCOTT:

Q. Special Agent Goodman, so you can pretty much safely say that Antonio Dash had some DNA that's associated with Eric Griffin under his fingernails, correct?

A. Yeah.

Q. And vice versa. Eric Griffin had some DNA associated with Antonio Dash under his fingernails.

A. Yes, there's a strong likelihood of that.

Q. And then you talked about a casing that you test -- was it one casing you tested with some DNA on it?

A. For Item 31.1, yeah. I also had some -- an in vat collection from some cartridge casings from 32.1.

Q. I want to show you State's 25. What, what do you see there?

A. It appears to be a picture of two individuals lying on the ground in a red substance.

Q. A red substance?

A. Yes, sir.

Q. Does it appear to be a solid or a liquid?

A. It's hard to tell from the photograph. It looks like it could have been a liquid.

Q. Okay. If I were to tell you that was blood, and there were a lot of casings found in that pool of blood,

would that be an explanation for one of their DNA being found on the casing?

A. That could be a possible explanation, yes.

Q. Okay, and if they're both lying in each other's blood because one was shot six times, the other was shot seven times, could that possibly explain why they have each other's DNA under each other's fingernails?

A. That could be a possible explanation, yes.

Q. Okay, and you're not making -- you're not here to -- they may have been fighting with one another, right?

A. I couldn't say, but it's possible.

Q. You don't know or it could be there's just so much of each other's blood all over the place and it's getting everywhere that that could account for why they have each other's DNA on each other?

A. It could be a possibility.

Q. Okay.

MR. SCOTT: Thank you, Ms. Goodman.

THE COURT: Anything further?

MS. YOUNG: No, Your Honor.

THE COURT: Thank you. You may step down.

WITNESS: Thank you.

(THE WITNESS EXITS THE STAND.)

THE COURT: Your next witness.

MS. YOUNG: Your Honor, the defense rests.

THE COURT: All right, ladies and gentlemen, there's -- the defense has rested. You've now heard the defense's case. We need you to take another break. Please do not discuss the case.

(THE JURY EXITS AT 4:27 PM.)

THE COURT: Is there any matters of law?

MR. LUKE SHEALEY: Yes, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. LUKE SHEALEY: Defense would once again move for directed ---

BAILIFF: Quiet please.

(A PAUSE.)

MR. LUKE SHEALEY: Your Honor, may it please the court? The defense would once again move for self-defense -- or directed verdict in this case due to the overwhelming evidence of self-defense. Really there's not a whole lot of inconsistency between the, the state and the defense in this case regarding what happened.

It seems that both agree that a terrible fight ensued in the living room of Mr. Barnes's home. No one disputes that he was in bed sleeping. I think that would be additionally corroborated by some cell phone

data that we provided through an expert.

No one disputes his account is that he was lying in bed and hears this loud boom consistent with what he believed is a home invasion. He's given several reasons why he believes that. One is the quality of his neighborhood being what he would call a bad neighbor, a dangerous neighborhood. It happens all the time. He was very much aware of recently his two roommates being robbed at gunpoint just down at The Corner Store. That is very much in his, in his mind.

On the other hand, he's also questioned and admits that because he sells marijuana to help support his smoking marijuana habit, that it could be that people just want to take his stuff. But he lies in bed and he doesn't hear any noise that he's familiar with such as his roommates. He knows for a fact that they were at work that day. He was talking to, he testified, Mr. Dash, who informed him of that. He knows that -- the habit and routine in the house, given that they have one car. It's for Mr. Sam Thomas to drive Mr. Dash to work and that was what he expected at that time of day. There's no other evidence to dispute that.

We heard from Sam Thomas. The state called him. Hears those noises, listening for approximately two minutes, only hearing violent feet, violent noises, his

own TV crash. He assesses that situation and believes that he's being home invaded.

We know today that he assessed that incorrectly, that it, for unknown reasons, reasons that we can speculate upon regarding a stolen gun allegation between Mr. Dash and Mr. Griffin, that Mr. Griffin was in the home and objectively those gentlemen are engaged in a violent altercation with each other, unexpectedly to our clients.

We know that the law of self-defense does not require a refined assessment of the dangers. We know that the law of self-defense embraces the concept that you're entitled to act and seek -- and take preemptive measures to end a threat in your own habitation as long as it's a reasonable belief. There's a lot of questioning about the reasonableness, reasonableness of that. But I don't think that even there's a question of the jury when you hear the type of violence in the home. I don't think a citizen of South Carolina is required to ask twenty questions of would-be intruders about whether they're armed or what their true intentions are. It's a tragic mistake.

But I do believe that the state has not, even light most favorable to them, they don't have any direct evidence or substantial circumstantial evidence of

malice, which would be required to get to a jury on these charges. You can no longer infer malice in the State of South Carolina through the use of a deadly weapon, as Your Honor well knows. So, respectfully, I'd ask that you do not allow this case to get to the jury and you grant our, our motion.

THE COURT: I'll deny the motion for the reasons stated at the end of the state's case, including considering any claim of self-defense. It's matters for the jury, and given the inferences that can favor the state's version or view of the evidence, the motion is denied.

MR. LUKE SHEALEY: Yes, Your Honor.

THE COURT: Defense has rested. Any other -- regarding the matter of law that Ms. Young attempted to do in objecting to the witness coming down from the witness stand, the -- state that on the record.

MS. YOUNG: Sorry, Your Honor. Yes, this is regarding -- let me -- I think it's been marked as Defendant's Exhibit 108. Let me double-check so I can be clear for the record.

(A PAUSE.)

MS. YOUNG: That is correct. It's Defense Exhibit 108. We attempted on -- during -- I guess, I guess it was during cross to -- or redirect, to enter exhibits or

excerpts of the videos from our client's statement in the interrogation room where he is -- expressed a great deal of remorse.

THE COURT: When you said redirect, you're referring to what you attempted to do?

MS. YOUNG: Yes, Your Honor.

THE COURT: All right.

MS. YOUNG: Yes. Again ---

THE COURT: And you attempted to offer a video?

MS. YOUNG: I did, Your Honor ---

THE COURT: Yes, ma'am.

MS. YOUNG: --- of my client's ---

THE COURT: Yes, ma'am.

MS. YOUNG: --- confession. Yes, and he's expressing a great deal of remorse. He's sobbing to his mother. He's bringing ---

THE COURT: I understand all that, but you objected after you've had direct. State re -- cross-examined. You did redirect. The state recrossed testimony over -- the witness is through testifying, and you objected to him leaving the witness stand. And then you indicate you have a matter of law, and what is the matter of law?

MS. YOUNG: Well, Your Honor, you, you denied my request to admit that video.

THE COURT: Yes.

MS. YOUNG: Based on a rebuttal of his implied --- you know, he's just now making it up ---

THE COURT: Yes.

MS. YOUNG: --- that he's remorseful.

THE COURT: Well, the court ruled on the objection, yes.

MS. YOUNG: That's correct. And then on recross, he got up and did -- he said I wasn't attacking him and being, you know, not remorseful.

THE COURT: Well, did you object to that testimony?

MS. YOUNG: I believe that I did.

THE COURT: And did the court rule on that objection?

MS. YOUNG: I don't know, Your Honor. I don't, I don't -- what I'm saying is he went right back to the remorse issue, and yet I do believe that I objected and then ---

THE COURT: What is it that you were trying to do then?

MS. YOUNG: Well, he went right back to what you just denied ---

THE COURT: Were you trying to ask more questions of the witness?

MS. YOUNG: No. I wanted to play the video, Your Honor.

THE COURT: Well, that would be introducing more evidence.

MS. YOUNG: Yes.

THE COURT: That would be, in effect ---

MS. YOUNG: Yes, I ---

THE COURT: In effect, that would be a third direct examination.

MS. YOUNG: Your Honor, he made an expressed accusation that his remorse was being feigned and that it was new. We had evidence that should of come in under Rule 801.

THE COURT: All right. So, you object to the court's ruling.

MS. YOUNG: And we ---

THE COURT: I understand that.

MS. YOUNG: Yes, and then I guess he argued that he wasn't saying that he wasn't remorseful, and then he got up and attacked him for not being remorseful.

THE COURT: All right.

MS. YOUNG: He opened the door back up to being able to present ---

THE COURT: Yeah. So, I -- at what point do we end this with the back and forth?

MS. YOUNG: Well, Your Honor, obviously you decide that.

THE COURT: Okay.

MS. YOUNG: I have to make my record and I have to try to get it in.

THE COURT: But your record is not based on any rule or procedure. You're, you're arguing, in effect, that you have the right to do a, a, a third direct examination or that you have the right to introduce exhibits through the state's cross-examination.

MS. YOUNG: Well, Your Honor ---

THE COURT: When the state gets through cross-examining the witness, that's it. You don't get a third time to ask more questions.

MS. YOUNG: Well, Your Honor, I think what I'm arguing is that we're entitled to a full and -- full and fair defense in this case.

THE COURT: Oh, you don't need to argue that.

MS. YOUNG: Yes.

THE COURT: That's without saying.

MS. YOUNG: Right, and I believe that this prevented us from being able ---

THE COURT: So, you object to the court's ruling and, and, and the record will reflect the court's ruling. I'm trying to understand why you're objecting to a person who has had two direct examinations, two cross-examinations, they're through testifying, and

you're objecting to them leaving the witness stand.

MS. YOUNG: Your Honor, I believe that Mr. Scott opened the door back up to be able to bring that evidence in, and his right to a full and complete ---

THE COURT: Yeah.

MS. YOUNG: --- defense ---

THE COURT: All right.

MS. YOUNG: --- under the U.S. Constitution allowed -- it trumps the court rules.

THE COURT: All right.

MS. YOUNG: And not your ruling.

THE COURT: So, that's your ---

MS. YOUNG: But ---

THE COURT: You've made a record.

MS. YOUNG: Thank you, Your Honor.

THE COURT: I don't think it makes any -- I don't -- there's no precedence and rule of procedure and any examination under Rule 611 is subject to the discretion of the court to present a needless waste of time. The parties have had full opportunities to question the witnesses in a -- repeatedly had that opportunity to do so and, and through the numerous questions, many of which were quite repetitive, and I find that the mode and order of interrogation and presentation of evidence under Rule 611 has been

complied with, and your matter of law that you call a matter of law is noted for the record.

MS. YOUNG: Thank you, Your Honor.

THE COURT: All right. What else? We're through with all the testimony. I've denied directed verdict motions. I'm ready to let the jury go til 9:30 tomorrow morning, and we will stay and discuss any requested jury charges that you all might have.

Aside from that, any other comment at this time?

MR. SCOTT: Not from the state, Your Honor.

MS. YOUNG: Nothing from the defense, Your Honor.

THE COURT: Okay. Bring the jury, please.

(THE JURY ENTERS AT 4:39 PM.)

THE COURT: Ladies and gentlemen, you have now heard all of the testimony in the case; you've now received all of the evidence in the case. The next thing will be closing arguments, which we will do at 9:30 tomorrow morning.

So, we're done for the day. Please do not discuss the case with anyone, and we'll see you at 9:30 tomorrow morning.

(THE JURY EXITS AT 4:40 PM.)

THE COURT: Do you all have requested jury charges for me to look over?

MR. LUKE SHEALEY: Yes, Your Honor. May I

charge this.

THE COURT: Yeah, it's highly unlikely that I will charge the, the jury this. The jury is to evaluate credibility of witnesses and not just generally did the police do a good job or bad job or whether or not they were good witnesses or bad witnesses.

All right, what's the next one?

MR. LUKE SHEALEY: Would you like -- we'll, we'll email you the cite anyway.

THE COURT: Okay.

MR. LUKE SHEALEY: And if you choose not to grant, we'll just have to ---

THE COURT: All right.

MR. LUKE SHEALEY: --- make a record on it.

Number 5. Some of these are a little out of order. We've got self-defense generally in a couple like acting on appearance, imminent danger. 5 is acting on appearance. That's just the state of the law that, you know, is encompassed through cases like *State v. Sullivan, Rash, Starnes, Jackson*. I don't see a cite on that one. I could probably take out the last paragraph. That looks to be a -- we were kind of rushed doing this at lunch given that things were ---

THE COURT: The last paragraph of which one?

MR. LUKE SHEALEY: On, on acting on appearances.

That, that would not apply to this case, that last paragraph. Those are particular factors from a different case.

But the important thing -- this is probably the most important jury charge you might consider -- is that the law of our land is that, you know, you are allowed in the concept of self-defense to act on appearance. You may indeed mistaken. That is what our case law says.

THE COURT: All right.

MR. LUKE SHEALEY: And you're not held to a refined assessment of the danger as long as you're acting on -- as that reasonable person of ordinary coolness and courage would have acted in reading the appearance of danger. So, that is, that is longstanding jurist, jurist prudence and we request that it be charged.

THE COURT: What says the state?

MR. SCOTT: I think the defendant testified he didn't act on any appearances. He heard a boom and then blindly shot into a room.

(A PAUSE.)

THE COURT: All right, self-defense. He's without fault in bringing on the difficulty. Second possibility is contentious language, which is -- there's no language. Mutual combat. There's no mutual combat.

Let me see. And battered person's syndrome. That doesn't apply. The second element is being in imminent danger:

> Person of ordinary firmness would be -- would strike the fatal blow to prevent death or serious bodily injury. If he believes that he was in imminent danger, must be shown that a reasonably prudent person of ordinary firmness would have the same belief. He should consider all the facts and circumstances, including the physical condition and the characteristics of the defendant and the victims. Defendant does not have to show that he was actually in danger. It is enough if he believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief, and defendant has the right to act on appearances even though the defendant's belief may have been mistaken. It's up for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

And I think this is probably everything you said

other than using the word preventive action and refining assessment.

MR. LUKE SHEALEY: And those are very important words in the context of this case, Your Honor, and that's from the case law.

THE COURT: What says the state?

MR. SCOTT: Just what is the case law that talks about refined? That -- that's not ---

THE COURT: Pardon?

MR. SCOTT: I was just asking what was the cite of the case that says that -- discusses refined assessment?

MR. LUKE SHEALEY: Beg the court's indulgence.

(A PAUSE.)

MR. LUKE SHEALEY: That will be *State v. Rash*, 182 S.C. 42, 1936. *State v. Starnes*, 340 S.C. 312. It's a 2000 case. *State v. Jackson*, 277 S.C. 271. It's a 1955 case:

> One may act on appearance. He may be mistaken. The law does not hold him to a refined assessment of the danger provided, of course, he acted as a person of ordinary coolness and courage would have acted and should of acted in meeting the appearance of danger. He does not have to wait until his assailant gets the drop on him. He has the

right to act on the law of self-preservation and prevent his assailant getting the drop on him. If it is apparent or reasonably apparent his assailant was taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.

And I think I can even add some interesting oral argument. I'll add the oral argument from *State v. Dickey* with Justice James during oral argument. He asks:

Does he have to interview?

Regarding defendant.

I'm not being facetious. Does he have to interview the perpetrators or ask which one of you fired that shot so I can fire my shot accordingly? The answer is no because a person has the right to act on appearances even if the person's belief is ultimately mistaken.

And that's a direct quote from Justice James.

MR. SCOTT: What was the cite for *Starnes*?

MR. LUKE SHEALEY: I said -- ask the court reporter.

Your Honor, it's the law of our land.

THE COURT: And what word are you using, Starne?

MR. LUKE SHEALEY: *Starnes*.

THE COURT: Oh, is that that death case out of ---

MR. LUKE SHEALEY: Yes.

THE COURT: --- out of Conway, Horry County?

MR. LUKE SHEALEY: I believe, yes, sir. 340 S.C. 312. It's a 2000 case. I cited *State v. Jackson*, 277 S.C. 271, 1955 case.

THE COURT: We don't want to go back to 1955.

MR. LUKE SHEALEY: Well, I know you're a *Mouzon* man, but *State v. Hendrix*. We can just go back as old as I am, 1978. 270 S.C. 653. *State v. Davis* is an '84 case. The list goes on and on, Your Honor. It's a very standard charge.

THE COURT: Well, I think the standard charge is the charge that I've just read to you.

MR. LUKE SHEALEY: Well, okay. Then it's not so standard, but it's very grounded in our jurisprudence and very applicable, applicable to this case.

THE COURT: It's a different, different *Starnes* than a -- this *Starnes* is a Lexington case.

MR. SCOTT: They're telling me refined assessment doesn't even show up in that *Starnes* case. They did a, a search for that term. It's not popping up.

MR. LUKE SHEALEY: Well, we'll let the court do his own research. I can send you my -- a brief on it

tonight if you'd like, Your Honor.

MR. FOWLER: Is there a pin cite for refined assessment? Do you have a page number that it goes to?

MR. LUKE SHEALEY: I don't, but you have my proposed order. It's all in that.

MR. SCOTT: Yeah, we, we object to that, that jury charge, Judge.

MR. LUKE SHEALEY: I'll email you all the cites tonight, Your Honor, specifically.

THE COURT: So in this *Starnes*, it says a:

> Murder defendant who claims self-defense was entitled to an appearance charge with respect to one shooting. According to the defendant, immediately prior to the shooting, the defendant observed the victim hold a gun to a third person's head and threaten to shoot third person apparently because intended drug dealing had gone bad. Fourth person then pointed a gun at defendant and threatened to kill him and defendant, unaware the victim had passed his weapon to fourth person, erroneously believed the victim was armed and intended to kill defendant.

And in that case, the conviction was reversed because the court did not instruct on the right to act

on appearance. The right to act on appearance is now a part of the standard self-defense charge, or the defense wants me to take certain words that, including this refined assessment, which has been given to me in bold, and we'll, we'll look at it and, and with anything else that's submitted and let you all know in the morning. All right. That's that.

Imminent danger.

MR. LUKE SHEALEY: Yes, sir, and there's a little overlap there, but some of the acting on appearance does encompass the imminent danger. But I think it's appropriate to have a specific definition of what imminent danger might be in the, in the context of a reasonable, prudent man of ordinary firmness. And that just goes -- cite of *State v. Jackson*, *State v. Rivers*.

It's important, again, to recognize that you don't have to wait until your assailant gets the drop on you. You have the right to act on the law of self-preservation to prevent that. So, there's a little overlap. But imminent danger is another kind of subcategory because that is, you know, you have to be reasonably believing you're in imminent danger. So, I think it is appropriate to flesh that out.

THE COURT: All right. What says the state?

MR. SCOTT: Just, Your Honor, imminent danger is

covered in your self-defense charge. This, this is more -- almost identical to the acting on appearances jury charge. And, again, it's -- imminent danger is covered in the standard self-defense.

THE COURT: Well, it says:

> The defendant has the right to act on appearances even though the defendant's belief may have been mistaken. It is up for you to decide whether defendant's fear of imminent danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation. He doesn't have to wait until his assailant ---

Who are the assailants here?

MR. LUKE SHEALEY: The would be assailants are the home invaders that he reasonably believed would come into his home based on the crashing TV, the loud bang, the violent noises, the loud ---

THE COURT: The assailant is his roommate?

MR. LUKE SHEALEY: No, sir, it's who he reasonably believed were his assailants.

THE COURT: Okay.

MR. LUKE SHEALEY: Unfortunately, they're not applicable, but the record is replete with information that he, thinking his roommates were not there based on

their usual habit and the course of going to work that morning, and based on what he heard, he didn't -- and his wife thought he was being home invaded.

And if Your Honor remembers the day before where Sam Thomas testified, the state witness, and my client testified there was an argument as well. But because he -- they -- our client was in his room sleeping, but because he heard his, his, his roommate's voices, he didn't go out with guns blazing.

THE COURT: Yeah.

MR. LUKE SHEALEY: So, it's -- he certainly has, at least in the record, he shows the ability to assess the threat and re -- and even in our final case it's not required. So ---

THE COURT: Yeah, I see here you have *State v. Jackson*, 1955; *Rivers*, 1938; *Rash*, 1936; and then *Starnes*, 2000. I'll look at it. But I believe the standard charge is, is sufficient on right, right to act on appearances. It's up for the jury ---

MR. LUKE SHEALEY: I've got ---

THE COURT: --- to decide based on their view of the evidence.

MR. LUKE SHEALEY: I think that was the imminent danger charge, Your Honor.

THE COURT: Well, part of the imminent danger

charge is the right to act on appearances. That's part of the same charge. These two charges are, are, are combined.

All right, no duty to retreat in one's own home, number 7.

MR. LUKE SHEALEY: Yes, Your Honor. That is the state of, of the law even against a co-occupant. *State v. Grambling.*

THE COURT: What says the state?

MR. SCOTT: You know, I'm -- I'll leave that to Your Honor's discretion.

THE COURT: It's part of the standard charge.

MR. SCOTT: Yes, sir.

THE COURT: And defense of habitation.

MR. LUKE SHEALEY: Yes, Your Honor, and that is very important in this -- to this case and that -- and analogous yet distinct from self-defense, as you know, but it doesn't require an attack. It just requires an intrusion or a trespass and that's the law extending back from -- to *State v. Bradley*, 1923, allows a man to, to take reasonable means, means to expel the intrusion or end the obstruction, including deadly force. There's numerous cases regarding the defense of habitation and failure to give that instruction when it is warranted. So, we would -- we do believe it's warranted here, given

that he was defending his habitation and reasonably believed that he was being home invaded.

THE COURT: What says the state?

MR. SCOTT: The first thing that occurs is the guy challenged me for a '57 case. Then he presents one thirty-four years older.

THE COURT: Say what now?

MR. SCOTT: I said he, he gets on to me about a 1957 case, and this one's thirty-four years older. But this, this is inapplicable, Your Honor. There's, there's been no evidence of any kind of trespass. The -- no evidence of any kind of a forceful entry that was testified to.

Eric Griffin was known as a frequent guest at the house. Testimony from the witnesses outside was that they heard him go up to the second level and knock on the door. Of course, Mr. Dash was a occupant of the apartment. I don't -- he -- I, I don't think this applies to our particular case, Your Honor.

MR. LUKE SHEALEY: And, Your Honor, I would disagree and it's, it's very important to note that what my client testified to and what is in the evidence is he's awakened to a loud bang. Yes, this door jam is not broken, but we're dealing with a metal door.

We know that Mr. Dash and Mr. Griffin appear to

have this animosity about a stolen gun. It doesn't require necessarily trespass. It requires an -- it can be a trespass. But it could be an intrusion into the home. He's -- this is my -- this is the original Castle Doctrine which is evolved into our stand-your-ground laws and it's defense of habitation.

It, it re -- it's important here because it doesn't require an attack. When you're in your own home and you feel reasonably that there's an intrusion and attack on your home, you don't have to first show that you were lunged at or someone pulled a gun on you. You have every right in your home to then end that intrusion, including to the point of deadly force. *Bradley* is just an example. It's a seminal case where in that case, someone was asked to leave and they refused.

So, this case, which I would respectfully ask the court to err on the side of caution because there is evidence of that, it should be charged and it's a distinct defense from self-defense.

THE COURT: The standard charge says that:

> The defense of habitation is a separate and distinct defense from self-defense. If the defendant or a member of the defendant's household is attacked in the defendant's own home, the defendant may use a force which

appears to be needed to protect himself or his household from death or serious bodily injury. If a trespasser refused to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. Defendant -- the effort to eject the trespasser, the life or safety of the defendant or a member of the household is jeopardized, the defendant may take the life of the trespasser. The kind of degree of force which are justified depends on the conduct of the trespasser. If a person entered the dwelling at the invitation of a member of the household, the person becomes a trespasser when asked to leave. If while legitimately exercising in good faith the right to eject a trespasser the defendant is assaulted by the trespasser and fears death or serious bodily harm, the defendant would be without fault in bringing on the difficulty. Whether the defendant was acting in good faith in attempting to eject the victim and was assaulted in the process is a question for you to determine.

(A PAUSE.)

THE COURT: As part of the duty to ---

MR. LUKE SHEALEY: May I ---

THE COURT: --- retreat involves increased risk of harm, the defendant had no duty to retreat if, by doing so, the danger of being killed or suffering serious bodily injury was increased, and if the person defended was on his or her own premises as defending a third party, there'd be no duty to retreat. And where the person ---

There's some general stuff on duty to retreat.

MR. LUKE SHEALEY: I, I would, I would like to -- I would love to look at your defense of habitation charge, but I think we do need to add the charge.

THE COURT: We're going to send you the --

MR. LUKE SHEALEY: Thank you.

THE COURT: --- the standard charges on that. The one you've given me about ejecting a trespasser, this is, you know, in -- South Carolina has kind of affirmed pretty much the right to kill someone if you're trying to get them off your property and they won't leave. Very liberal with allowing people to kill people who won't leave when, when you're trying to get them to leave seemingly. That's sort of like forceful ejectment, the defense of habitation including using

deadly force, if necessary.

We're back in 1923:

> A man who attempts to force himself in another's dwelling or, or being in the dwelling by invitation refuses to leave when an owner makes that demand is a trespasser, and the law permits the owner to use as much force, even the taking of his life, as may be reasonably necessary to prevent the intrusion or the accomplishment or to accomplish the expulsion.

So ---

MR. LUKE SHEALEY: Okay, and Your Honor mentioned in -- within that charge an attack on a co-occupant or someone else who resides there, to defend against that. I mean, it's undisputed that Mr. Dash and Mr. Griffin were engaged in some type of a physical altercation, including ripping out of earrings, blunt force trauma to Mr. Dash's head.

Now, I don't -- there's no evidence that Mr. Barnes was aware of an attack against Mr. Dash because he just didn't think anybody was home. But he, he viewed this as being an attack on his habitation, an intrusion to the safety of his home, which does not require for you to first show that you were attacked. That's the main

difference between defense of habitation. So, he was using his powers as a citizen of South Carolina to end that intrusion, eject the problem, which you're allowed to use with deadly force.

Now, he's not sitting there saying he's saying leave, leave, leave. That's not in this case. But he's ending an intrusion into his home.

THE COURT: I mean, I think when he gets the, the self-defense charge that he can write -- that he can act on appearances, and that's what he testified to, I think that addresses that issue and, and this defense of habitation is not a separate charge that he's entitled to.

MR. LUKE SHEALEY: I respectfully disagree on that.

THE COURT: All right. Yeah, that's why ---

MR. LUKE SHEALEY: All right.

THE COURT: You know, whatever you've given me will be given to the jury, and whether you agree or disagree, you know, that's -- that will be a matter of record because I'm not going to charge every requested charge. So, you don't have to hit me over the head on this disagreement.

MR. LUKE SHEALEY: I'm not going to do that.

THE COURT: All right.

MR. LUKE SHEALEY: Going in order.

THE COURT: Yeah. Well, wait a minute. I'm going in order.

MR. LUKE SHEALEY: Okay.

THE COURT: You follow along.

MR. LUKE SHEALEY: The order may be a little messed up because I did withdraw one. So, forgive me.

THE COURT: Where are we now? All right, which one you want to go to next then?

MR. LUKE SHEALEY: Well, if we're going in order, I guess we're on Number 9.

THE COURT: All right:

A person can be acting lawfully even if he is in unlawful possession of a weapon at the time of the shooting.

MR. LUKE SHEALEY: Yes, Your Honor, that's -- obviously my client has no record. He's not precluded from owning a gun.

THE COURT: All right. We understand that.

Is there an objection to this charge?

MR. SCOTT: If they want it, that's fine. I mean, it seems to insinuate he was in unlawful possession. So, that sounds good to me.

MR. LUKE SHEALEY: Well, Your Honor, I just -- I have to bring it up because I -- there's a lot of testimony about drug dealing and acting unlawfully, and

I just think if it's not addressed, it will probably be argued -- it could be argued by Mr. Scott and I just don't want the record -- you know, the instructions ---

THE COURT: Do you want me to give this charge?

MR. LUKE SHEALEY: I do.

THE COURT: All right:

A person can be acting lawfully even if he is in lawful -- in unlawful possession of a weapon if he was entitled to arm himself at the time of the shooting.

So, the state does not object. That's what you want. We'll give that charge.

MR. LUKE SHEALEY: Thank you, Your Honor.

THE COURT: Number 10, use ---

MR. LUKE SHEALEY: And that ---

THE COURT: --- of force.

MR. LUKE SHEALEY: Yes, sir. This is, again, coming from some of these cases I've been citing, particularly *State v. Hendrix*.

THE COURT: Oh, it's a standard charge on ---

MR. LUKE SHEALEY: It is.

THE COURT: --- this, of course.

MR. LUKE SHEALEY: It is. If you have that identical charge, then I won't ---

THE COURT: All right.

MR. LUKE SHEALEY: --- dicker over it as long as it has that language until ---

THE COURT: Yeah, once you -- if you have a right to shoot, you can keep shooting.

MR. LUKE SHEALEY: Yes, sir.

THE COURT: All right. If you're in imminent danger.

MR. LUKE SHEALEY: All right.

THE COURT: Number 11, malice.

MR. LUKE SHEALEY: I submitted this in anticipation of the *Mouzon* argument. I think I -- I think we settled that. I'm okay with your standard.

THE COURT: All right, statements of counsel. That's standard.

MR. LUKE SHEALEY: Yes, sir.

THE COURT: The statements of counsel do not constitute evidence and that's -- I love to tell them that.

Number 14, self-defense generally.

MR. LUKE SHEALEY: That's just a general self-defense charge, Your Honor, which I'm sure you have it.

THE COURT: All right. I'll give them that.

Failure to produce a witness.

MR. LUKE SHEALEY: Yes, sir, Your Honor. There's

Four.

MR. LUKE SHEALEY: I think that will probably be me, Your Honor.

THE COURT: Okay.

MR. LUKE SHEALEY: I can't imagine any more than thirty, forty minutes.

THE COURT: All right.

MR. LUKE SHEALEY: I'll say.

THE COURT: We, we expect the jury to get this case by 11:30 or a little later, and we shall see because the charge is not that long on a murder case.

All right. See y'all tomorrow. Get some rest. Be at your best.

(WHEREUPON, THE CASE IS AT EASE.)

THURSDAY, DECEMBER 8, 2022

(COURT RESUMES AT 9:42 AM.)

THE COURT: Before we get a little further, I want to address first of all regarding the charges that I sent to you all last night. Any comment on any of these charges?

MR. LUKE SHEALEY: Your Honor, yes. Charges you have included, I find nothing wrong with those charges. The only thing I do find wrong is that it failed to include particularly the defense of habitation charge that we discussed.

THE COURT: Yes, sir.

MR. LUKE SHEALEY: And I would cite for the record *State v. Bryant*.

THE COURT: *Bryant*?

MR. LUKE SHEALEY: Yes, sir, 391 SC 225, Court of Appeals opinion regarding it being reversible error to not give the defense of habitation charge as well as a self-defense charge.

THE COURT: What were the circumstances?

MR. LUKE SHEALEY: That was a pretty famous case that also had a Supreme Court opinion about a different issue. This gentleman was in a wheelchair and was getting drunk at a bar and met a friend who the state believed he lured back to his hotel and killed by shooting him with a gun. He testified and said that he was being pestered; he was being hounded. The guy did come into his room without his permit -- his permission, and so he shot him, even though he wasn't being attacked, to end that unwanted intrusion into his ---

THE COURT: He was aware that the person was in his room and was trying to get the person to leave or what?

MR. LUKE SHEALEY: That, that is his testimony. He was aware, and I think -- I understand what Your Honor -- the distinction what I think in Your Honor's mind is again we have -- we have discussions about what we

reasonably believe for these matters. *State v. Rye*, the defense of habitation charge was given. It was just incorrect. But I would just cite those for the record, Your Honor, just to preserve it.

THE COURT: Well, I'd like to see it. Let me -- you can pass it up to me. I'll take a quick look at it.

MR. LUKE SHEALEY: Yes, sir.

(A PAUSE.)

THE COURT: Bryant is a paraplegic confined to a wheelchair living at the Days Inn. Let's see, where was this? Living at the Days Inn.

MR. LUKE SHEALEY: Richland County, I believe, Your Honor.

THE COURT: Richland?

MR. LUKE SHEALEY: Yes, sir.

THE COURT: Yeah, this is really amazing, the volume of cases that make it in the records from Richland County.

MR. LUKE SHEALEY: Yes, sir.

THE COURT: These appellate cases, and Lexington County. Seems to be 60 or 70 percent of the total.

So, he's a paraplegic living at the Days Inn 150 yards from the Bottoms Up Nightclub. He met Austin, was at the club with another man from North Carolina. They became friendly and they became intoxicated. There was

conflicting evidence on the relationship of the two men that evening and what occurred between them. People at the club characterized them as being very chummy. According to Bryant, Austin and two other men with Austin pressed Bryant to get some marijuana. He told him he did not do that. He didn't know where to get any. Left the club at 3:30 AM.

Before they left the club, Bryant had fallen out of his wheelchair. Austin helped him back in the wheelchair.

Let's see. Night auditor at the Days Inn was working. She observed a gentlemen pushing Bryant in the wheelchair and laughing and talked like buddies. Bryant testified he repeatedly told Austin he did not need help. He continued. Bryant stopped his chair. Told Austin he did not want his help, and he should leave him along. Austin then pushed Bryant, causing him to fall and swinging at each other, knocking his chair. Austin then picked Bryant up, put him back in the chair. Bryant attempted to roll away. He grabbed the back of the chair, kept arguing.

Bryant claimed he was scared to open the door to the room with Austin standing there because Austin had been pressing him for marijuana and they had been fighting. He attempted to stall opening the door and Austin tried to snatch a pouch from him, causing the

contents to fall.

Let's see. Bryant testified at the time he saw Austin in the breezeway angry:

> I am done. I'm seeing red. I'm very angry. I was doing like this. I was doing like this. When I seen him, I started shooting him and I just shot. Shot until shotgun was empty.

Died of birdshot.

So, the issue at the trial was whether the judge erred by refusing to instruct the jury on the defense because a self-defense instruction was not sufficient to cover the separate and distinct offense -- defense and Bryant testified he was threatened being around his hotel room, and Bryant was entitled to this instruction under the facts of this case.

> On appeal, Bryant asserts the defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary force to inject -- eject the person. That instruction that the same elements required by law to establish self-defense apply to defense of habitation with the exception of duty to retreat is an improper charge as it incorrectly implies the defense

of habitation requires the defendant to establish his person or property was in danger of injury or harm for the defense of habitation to apply. A defendant need only establish a trespass has occurred and the chosen means of ejectment were reasonable. And the defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was defending himself from imminent attack on his own premises. For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Unlike the defense of self-defense, defense of habitation does not require that a defendant reasonably believe he or his property was in imminent danger. Although self-defense and habitation are analogous, they are not identical. When one becomes a trespasser, the law presents the owner of the home to employ such force as reasonable necessary to eject the person.

Let's see.

(A PAUSE.)

THE COURT: There is evidence that when Bryant fired the fatal shot attempting to eject Austin as a trespasser from his home, accordingly the fatal shot, based on his testimony, occurred while Austin was in Bryant's room and Bryant was attempting to eject him as a trespasser. We find such determinations for the jury, as there was evidence produced at trial from which the jury could find Bryant was attempting to eject a trespassing Austin from his home. Self-defense is an insufficient charge. It is insufficient to charge only self-defense when the charge of defense of habitation is warranted.

All right. What says the state?

MR. SCOTT: It's inapplicable to our case.

THE COURT: Okay.

MR. SCOTT: There's no evidence of trespass. There's no evidence of any kind of effort to eject a trespasser. It occurs to me this is a self-defense type defense by the defense. I don't think habitation in that respect applies to our facts, Your Honor. I think it's an inappropriate charge.

THE COURT: Yes, sir.

MR. LUKE SHEALEY: And, and what we're talking about here is a trespass for an intrusion into one's home. And, and what the law through *Bradley* on up to *Bryant* says is that you can use reasonable means to eject or end the intrusion, including deadly force.

So, obviously the benefit as distinguished from self-defense is you don't have to show you're under attack. You get the benefit from being in your own home, but it encompasses the idea that deadly force can be used to end the trespass upon someone's property, as our client reasonable believed he was being home invaded. So, it contemplates that there will and can be a death, but it doesn't necessarily mean that you have to say sir, please leave. I would like to tug you -- tug you by the ear out the front door. That is not what's required. I think we should err on the side of caution here. I think it is appropriate.

THE COURT: I tend to err on the side of caution because I think the juries typically, they correctly view the evidence regardless of the jury charge.

MR. SCOTT: In this, this case, Your Honor, you've got one person who's an invitee. No evidence to the contrary. No evidence of forced entry. Testimony was that Eric Griffin would visit the house on an almost daily basis. And of course we know Antonio Dash was a

resident who had been living there for one year.

Any concern as far as using deadly force to meet a threat is covered in the self-defense instructions. I just find it inapplicable based on the reading or listening to Your Honor read that particular case. It envisions the ejection of a trespasser.

This testimony here by the defense is I heard a bang. I think it was a home intrusion. I felt in fear of my life, so I felt the only reasonable means to extinguish the threat was firing blindly into a room. I heard no evidence of any effort to eject. I only heard an effort to extinguish a threat, and I heard no evidence whatsoever of any kind of trespass.

MR. LUKE SHEALEY: And I don't think there's any evidence in the record in this case of Mr. Griffin being invited that day to this home, Your Honor.

THE COURT: Under your theory, Mr. Shealey, Dash was just collateral damage, or he was being ejected, too?

MR. LUKE SHEALEY: Well, our client had a reasonable belief he was being home invaded. His, his ---

THE COURT: I understand that.

MR. LUKE SHEALEY: Right.

THE COURT: My question, was Dash collateral damage

under your theory?

MR. LUKE SHEALEY: He believed that he had a right to end the intrusion and eject whoever was in there. He was mistaken about both. So, under the law of defense of habitation, as long as he's acting reasonably, it should be a question for the jury. I mean, everybody's collateral damage unfortunately. It's what the -- what law should be given to the jury and what was reasonable by Mr. Barnes that day.

THE COURT: I'm going to charge this habitation. Weighing everything I've said that -- all these cases all say that the charge should be based, uniquely based on circumstances of every case if the jury, they could possibly believe the defense's theory. So, I'm going to charge it, let you all ---

MR. LUKE SHEALEY: Thank you, Your Honor.

THE COURT: Pardon?

MR. LUKE SHEALEY: Are you charging from ---

THE COURT: I'm charging the standard habitation charge.

MR. LUKE SHEALEY: Yes, Your Honor.

THE COURT: And let you all argue it back and forth to the jury.

Anything else regarding the ---

MS. YOUNG: Your Honor, just very briefly? I was

tasked with reading over what you sent last night this morning. On page 8, I think it's the first sentence. Mr. Barnes's last name is accidentally left off. It just has his first and middle name. And then the second sentence it says it's a murder charge and it actually has Mr. Barnes listed instead of Antonio Dash. Just the last names got mixed up.

THE COURT: Okay. We'll be sure that it's clear.

(A PAUSE.)

THE COURT: All right, should intent be charged, criminal intent? Y'all have not requested it. Should it be charged?

MR. LUKE SHEALEY: Your Honor, I guess forgive our oversight for that. In thinking about that yesterday, I don't -- I defer to you on that. I would say yes. I haven't looked at your charge on that, but I'm sure it's standard. I'm sure I've heard it before.

THE COURT: As many cases as you've charged -- you've tried, I'm sure you've seen it.

MR. LUKE SHEALEY: Yes, Your Honor. I have no, no problem with that. I would agree with it.

THE COURT: Says the state.

MR. SCOTT: Well, Your Honor, I can't really think of a case I haven't seen intent charged. I guess murder is a general intent crime. Of course, intent is covered

in degrees of malice, but I don't see a reason to argue against the charge criminal intent.

THE COURT: All right, I'm going to charge intent.

Now, regarding this charge or not charging manslaughter, there's been an abundance of testimony by the defendant saying, well, I loved him like a brother. I didn't -- I wouldn't hurt him, et cetera, et cetera, and that he had no malice toward him even, even though he shot him the many times that he did.

Yesterday, you all had indicated that you -- neither side requested a charge on manslaughter. Sort of like all or nothing, role the dice type of approach. I heard from Mr. Shealey speaking for Mr. Barnes, but this is a matter that I have to hear from Mr. Barnes to be sure that he fully understands that murder is punishable by thirty years to life. Manslaughter is punishable by two years up to thirty years. Of course, not guilty means you go out that back door.

So, Mr. Barnes appears to be a quite intelligent young man. Regardless -- certainly if it's a guilty verdict, he will be -- there will be more papers filed on this case beyond this verdict today, including PCRs. So, I want to be sure if he is fully informed and that he's conferred or counsel has conferred with him because it's his case.

MR. LUKE SHEALEY: May we confer again with him briefly?

THE COURT: Yes, sir.

(COUNSELORS CONFER WITH DEFENDANT.)

MR. LUKE SHEALEY: Your Honor, we have consulted again with him, and he does still confirm our strategy to not seek voluntary manslaughter. I don't think there's much evidence of that personally, but he, he does not want us to ask for that instruction.

THE COURT: Is that correct, Mr. Barnes?

DEFENDANT: Yes, sir.

THE COURT: Sir?

DEFENDANT: Yes, sir.

THE COURT: All right. Very well.

Anything else before the jury comes?

MR. SCOTT: Nothing from the state.

MR. LUKE SHEALEY: Not from the defense. I assume we'll be opening with the law. Then I'll go, and then the facts.

MR. SCOTT: That's not how I understand the -- pursuant to *Beatty*, I will argue the facts and the law. Pursuant to *Beatty*, Mr. Shealey will make his case, and then I will have any responding closing argument based on any new issue he raises.

MR. LUKE SHEALEY: And I will formally object to

Beatty for the record.

THE COURT: Object to the Supreme Court? Say what?

MR. LUKE SHEALEY: I object to that case. I don't think it's appropriate. I think it burden shifts.

THE COURT: I don't think the state is restricted in opening to just talking about the law. He must talk about the facts and argue his case.

You can bring the jury.

(A PAUSE.)

THE COURT: Mr. Bowen, just one more second, Mr. Bowen. Go right back out for just a second.

(A PAUSE.)

THE COURT: This is -- this is further on this issue of self-defense and defense of habitation. The cases that I've reviewed indicate that where there is a claim of defense of habitation, that the duty of retreat does not apply because you -- if you have a right to defend your habitation, then the jury shouldn't say you have an obligation to retreat.

MR. LUKE SHEALEY: And that's correct, Your Honor, and also you also have that charge in your self-defense because he's in his own home even as to self-defense.

THE COURT: But it also includes, as we discussed yesterday, there is no duty to retreat. But do you all want me to mention anything about duty of retreat as an

element or just ignore that part?

MR. LUKE SHEALEY: I think it needs to be made clear there is no duty to retreat in one's own home even as to defense of habitation just in case there's any confusion.

THE COURT: Mr. Scott.

MR. SCOTT: Judge, I'm not going to argue with the court. I know better than that, but I find habitation completely inapplicable. We're confusing the jury now, blurring lines between self-defense.

THE COURT: The jury will be told about the fact that I have charged them on many things is not an indication of what their finding should be or what they should believe to be the facts.

MR. SCOTT: I, I find that confusion abounds whenever we start blending all these different legal theories that I don't find applicable. However, I'm going to just count on them using their common sense and judging the facts, and hopefully they go our way but if they don't, so be it.

THE COURT: On the question or whether not as part of the self-defense charge the court should tell the jury that, you know, given the various elements of self-defense, the duty of retreat, it says if a defendant was on his own premises, defendant had no duty

to retreat ---

MR. SCOTT: When we did ---

THE COURT: --- before acting in self-defense, is that given where defense of habitation is given?

MR. SCOTT: Your Honor, we had the Castle doctrine hearing back in March, and I remember at that point had no duty to retreat in that particular aspect of the case.

Honestly, candidly, I don't know. I haven't studied the law of habitation. It was brought up this morning while I was preparing my closing argument. I defer to the court.

MR. LUKE SHEALEY: That is the law of defense of habitation. There is no duty to retreat.

THE COURT: You said that's the law of defense of habitation. My question is is it part of the law of self-defense if you charge defense of habitation?

MR. LUKE SHEALEY: It does because we know self-defense can happen outside the home, but self-defense can also happen inside the home. Let's say amongst roommates fighting at a card table or game. In that scenario, via *State v. Grantham* you would have no duty to retreat in your own home even against a co-occupant. That's why you gave -- my understanding was you were giving that charge, and it was produced to

us as part of your instructions yesterday. So, yes, it applied. You have no duty to retreat for self-defense or defense of habitation if you're in your own home.

THE COURT: What's his position? You really have no position on that?

MR. SCOTT: Well, my position is ---

THE COURT: That none of them apply.

MR. SCOTT: Well, that is of course, and as I said, Mr. Griffin, the evidence that we heard was that he was over there almost every day. The evidence we heard was that he knocked on the door. The evidence we saw was there was no damage to the door. Of course, Mr. Dash lived there. Self-defense, there's no other probable or reasonable means to avoid the conflict. I just think it's almost -- under this theory, every time there's a self-defense claim that happens in someone's residence, they're going to get a habitation charge, and I just don't find a path.

THE COURT: I'm not -- I'm not making any eternal precedent here. I'm just dealing with the peculiar facts and claims of this case. Mr. Barnes said he's been reading a lot of law lately, so.

Well, I'm going to give the standard self-defense, which includes no duty to retreat.

MR. SCOTT: Okay, and no other probable -- or

likely means to avoid the...

THE COURT: Well, I'll give the -- give the charge that I sent to you all.

MR. SCOTT: Okay. Thank you.

THE COURT: All right, they can come now. Thank you.

(THE JURY ENTERS AT 10:13 AM.)

THE COURT: Good morning.

JURY [EN MASSE] Good morning.

THE COURT: So, ladies and gentlemen, you've heard all of the testimony, received all of the evidence. It's time for closing arguments. First by the state.

Mr. Scott.

MR. SCOTT: Thank you, Your Honor. May it please the court?

Antonio Dash and Eric Griffin should not be dead. They were mowed down in the prime of their lives. You've not heard one reasonable, justifiable, logical explanation for them to have been taken from their loved ones. The only mistake they made was associating with Antonio Barnes. That's the only thing they did wrong that day, but they did not deserve to die, certainly not this way.

We will follow the evidence. On November 7, 2019, Eric Griffin was employed at a hotel, and you heard

about that. On November 7, 2019, Antonio Dash was employed at a restaurant. On November 7, 2019, Antonio Barnes's sole occupation was a weed dealer.

On November 7, 2019, Eric Griffin had plans. He had the day off work. He was going to drop his mother off at work, Wanda, as he normally did. He was going to drop the baby off at the babysitter's, and then he and Ieasha Washington, his girlfriend, were going to go do some furniture shopping.

Antonio Dash was at the apartment, up early getting ready for work as usual. Antonio Dash at the time had been living in that particular apartment, 14-G, at the Willow Run Apartments for about a year. He, Sam Thomas, and Antonio Barnes all lived together there. You heard about that.

Sam Thomas would have normally been home that morning. However, Sam Thomas gone to the doctor's office. It was an appointment that he didn't share with Mr. Barnes or anybody else because it was of a personal nature, so Mr. Barnes would not have known that he would be gone that morning.

Eric Griffith -- Griffin, rather, sat in the front passenger's seat of Ieasha's car. Ieasha drove. Wanda was in the backseat as they dropped Bailey off, the one-year-old daughter, over here at the Hillandale

Apartments. It was shortly before 9 o'clock. Hardly a cloud in the sky. Sun was out. Beautiful February morning.

As they were leaving Hillandale, rather unexpectedly Mr. Griffin asked Ieasha pull in real quick. Let me talk to my -- let me talk to my friend. Talking about Antonio Barnes. This would -- was unexpected but would not necessarily have been out of the ordinary. Ieasha had just dropped him off there two days earlier, and there was some testimony from, I think, Sam Thomas that there were times he was over there every day. He, he was friends with those guys. He -- it would need to be a quick stop, though, because Wanda needed to be at work at 9:30, and so again this is just before 9.

With those car, car windows down, Ieasha and Wanda watched Eric go up the stairs, turn to the left, and go to 14-G. That was the last time they would ever see Eric Griffin alive. They heard him knock on the door, and that would be the last time anybody would ever hear from Eric Griffin outside of that apartment.

About seven minutes went by. Ieasha and Wanda are out in the car and maybe getting a little antsy because, again, she's got to be at work at 9:30. We know they didn't hear anything because they testified to that

until they did hear something, something. Gunshots, pause, and then more gunshots. Ieasha thought was that gunshots or was it not? You probably don't want to believe that gunshots are coming from the apartment that your boyfriend just went into.

She called Eric 8:54 AM. We know this because her phone shows that. 8:54, she's calling Eric. Of course, he doesn't answer and that's when Eric Griffin and Antonio Dash were shot that led to their deaths, 8:54 February 7, 2019, apartment 14-G at the Willow Run Apartments. The sun was bright; there was hardly a cloud in the sky. Gunshots interrupted what had been a beautiful morning.

When Eric didn't answer, of course we heard Ieasha and Wanda climbed the stairs to the apartment. They knocked and knocked. There was no answer. They said about two minutes went by. Both of them said that, two minutes. That's a long time for somebody to answer a door when you're knocking on it.

Antonio Barnes finally comes to the door. He opens it just enough to slide out and closes it behind him, walks straight past Wanda, Eric Griffin's mother, and he confronts Ieasha. Why are -- why are they in here fighting is what he's asking her, which is confusing to her. Who is they? Eric and them are fighting. Of

course, she doesn't know who they are. He's a little bit surprised, he says, because he didn't expect anybody to be out there, but now he's got Ieasha and Wanda who are identifying him coming out of the apartment.

He stammering about for little bit. He certainly doesn't indicate that he's just killed the two. He's just saying why are they fighting, Eric and them. It wasn't until Wanda finally grows impatient and goes inside the apartment that the truth is known. Eric Griffin was dead. So was Antonio Dash. There they lie in that enormous pool of blood.

(WHEREUPON, EXCERPT OF BODY-WORN CAMERA IS PLAYED FOR THE JURY. AUDIO IS NOT TRANSCRIBED.)

MR. SCOTT: Officers respond. A lot of officers respond. There is not a lot of information at first. Of course they find the two bodies, and they quickly realize that they died of gunshot wounds, but they don't have the identity of the shooter. Of course Ieasha and Wanda are hysterical. They're in shock and of course Barnes hadn't told them anything of what had happened.

He's milling around the parking lot, a lot at first. He then begins drifting away from the scene as more and more officers show up and they're trying to piece everything together.

Here we have Mr. Barnes. You see the officer go in

about 9:02. We talked about 8:54 is when the gunshots were first heard, okay? Now, eight minutes later, here's Mr. Barnes out in the parking lot, okay? When the officers get there, where is the shooter? Where is the shooter? You're not seeing Mr. Barnes right here, and I've got an explanation for you. You know, he's, he's milling about, weighing his options, trying to figure out what exactly the story needs to be.

9:02, he's talking to people. 9:04 and he's smoking a cigarette. 9:05, almost 9:06, and then he's kind of hightailing it away from the scene with other people, 9:06. Again, this is Mr. Barnes at 9:06, okay? So, this is him about ten minutes after he kills two people, and he's out there hobnobbing around. He's smoking cigarettes. He's doing things in cars. Main-Main, the first time we heard about Main-Main was yesterday, but apparently that's Main-Main's car he's leaning into at 9:06, almost 9:07.

He's talking with people. He's going to other people's homes. He's driving around with people. He's going to the store, all the while trying to figure what his story is going to be. Again, he knows that apartment is going to be linked to him, and he knows that Wanda and Ieasha saw him come out. So, he's got to figure out what the story is going to be. He can't say

I didn't do it, right? His name is on the lease on that apartment. Wanda and Ieasha see him come out, the only living person in the apartment, when they go up those stairs.

He's formulating what his version of events is going to be. So, when Javontae Davis sees him and asked what happened, he says I don't know. I was asleep. I woke up, and they was dead. Okay, that's the first story.

But then he's got to tinker with it a little bit more because when he talks with Kevin Archer -- Archie, he tells him I don't know what happened. Archie presses him. Come on, man. You know. You were in there, right? He said, well, they tried to rob me, and he says, well, that doesn't make sense. One of them's your homeboy. The other's your roommate. He says, okay, they were on the ground fighting, and I shot them. So, you see kind of, like, the evolution of this story as he's walking around, as he's talking with other people, as he's thinking about the case.

At 10:47 AM, about two hours after killing these two, he finally tells the police he shot Antonio Dash and Eric Griffin. All right, so this is about two hours of wandering the parking lot, observing what's going on with law enforcement, then leaving and talking with God

knows who and going God knows where. He finally says it was me, 10:47.

Of course, he thought other people had already gone to the police. He was concerned, you know, when he goes in there. Y'all have the interview. He thought Shakihla Smalls has already gone and talked to the police. So, this is his version of trying to get ahead of the story, or his attempt to.

He goes in. He says he saw two people in his living room fighting, and he shot them. All right, he says he thought Sam was there, too. None of this made any sense at all. Antonio Dash and Eric Griffin's bodies were taken for an autopsy. Antonio Barnes was arrested. We will follow the evidence.

This is Antonio Dash's left arm. Antonio Dash had every right in the world to be in that apartment. Antonio Dash had lived there a year. Antonio Dash was killed in his living room at almost 9 AM February 7, 2019. Antonio Dash was shot between 6 inches and 3 and a half feet from the gunman. Antonio Dash had four bullet holes in his left arm.

You can see the stippling, and you heard Dr. Monroe said that this was a close range shooting. Stippling occurs 6 inches to 3 and a half feet away, and that was how Antonio Dash met his end, I guess. Close range by

somebody he thought was a friend.

This is Antonio Dash's left arm. You see the bullets were such close range and it was such a high caliber cartridge that it went cleanly through his left arm. This is Antonio Dash's right arm. This is Antonio Dash's right scalp, okay? He was shot in his head.

Bring those dummies over here, y'all.

(A PAUSE.)

MR. SCOTT: Antonio was shot in his right scalp, and for good measure, Antonio Barnes went over to the other side of him and shot him in his left temple for good measure.

I want y'all to look at these gunshot wounds. Rather thorough, wouldn't you say? I mean, every part of these men's bodies from the waist up are, are riddled with bullets. It's not from one side. It's from all angles.

You saw the autopsy pictures, you guys. You got, on his right arm, you've got an entry wound to the elbow, okay? You got an exit out at the right elbow. Again, you've got this gunshot wound to the right scalp. You've got a gunshot wound to the left temple. This is where he's peppered on his left arm. All these on the outside of his left arm are entry wounds; all of these you see on the inside are exit wounds.

Mr. Barnes was thorough. We give him that, and he does carry a gun that holds up to eighteen rounds at a time. This is malice, ladies and gentlemen. This is what malice looks like, this shooting somebody you claim to be your friend in both sides of the head.

Eric Griffin had a similar fate. Of course, you've got him being shot in the back twice. You see these on our mannequin here. You remember the pathologist, Dr. Monroe, showing you generally where these wounds were. The mannequin is helpful because you get to see instead of picture by picture of the wounds how they all look in conjunction with one another and their general positions on the body.

It's noteworthy and it's compelling because the man was shot twice in the back. He was shot in his left elbow. That's an entry and exit. He was shot in his right shoulder. And the coup de grace, of course, is going up to the man, putting that gun against the back of his head, pulling the trigger. That's the kill shot.

You heard the pathologist, who's done thousands and thousands of these autopsies. He said you know what I noticed, one of the first things I noticed about that particular wound is the contact nature. He explained this grayish color of the skin around the bullet hole. He describes that gas is being pushed in and mushrooming

out the actual wound. You see the hair's been pushed into the wound, it was such close range. He described these marks here where the chamber slaps against the gun and then the barrel was pressed against the head, causing those wounds.

Let's call this murder what it is. This is an execution. That's what this is. This is not, oops. Sorry, Ms. Griffin. Sorry, Ms. Dash. It was a goof. It was an accident because isn't that what they're telling you? Isn't that what they're saying to you guys? Anybody could do this, right, Mr. Barnes? Any reasonable person would do this. That's the story.

We, we're going to follow all the evidence, right? CSI went. They kind of did a sketch of some of their findings, and it's helpful for us because we are interested in following the evidence.

And you heard from their CSI investigator from the police department that this was Mr. Barnes's bedroom, and the infamous hall is located right down the middle, okay, and the front door is right here, the door he was so worried that somebody had busted open, okay? You can't go down this hall without seeing that door.

At any rate, his story is this. I was in my bed. I knew with 100 percent certainty that my roommates weren't home. Well, if you listen to his interview with

the police, he says I thought Sam Thomas was going to be home at the time, okay? He somehow knew with 100 percent certainty at the trial that nobody was going to be home, but his story is there's a boom, bang. And he's a dope dealer, so the first thing he says comes to his mind, because he has a lot of traffic in there, was that somebody had to be breaking into his house, okay, and he heard footsteps in the apartment, okay? He didn't say he heard multiple people. He heard footsteps. Is it so hard to imagine that was Sam Thomas out there? I don't know. Not to him. He just knew it was home invaders. He heard the TV fall.

And he didn't call the police, and he didn't lock his bedroom door. He just ran down the hall and started shooting indiscriminately. That's his story, and we'll talk a little bit more about that later.

He did a demonstration yesterday. I hope you guys were able to see the demonstration, but his story was as he goes down this hall -- of course, this is where Antonio Dash lives. He said didn't bother to look in there to see if he was in there. Didn't even bother. He passed by the open door of Sam Thomas. Didn't bother to look in there to see if Sam was in there. He just comes around and shoot, shoot, shoot, shoot, shoots.

And I say, okay, is that reasonable? He said yeah,

any reasonable person would do that. That -- that's what you do if you hear something from your bedroom. You just start shooting. Even though you live in a house with two other people, that's what you do. I said is that -- is that right? That's what you think is reasonable? He said yeah. To me, that's very reasonable. I say All right. Okay. Well, if that's what you believe, you know, and I say, well, you know, what is your interpretation of how certain you need to be before you start shooting at people and killing them? I said do you need to be a thousand percent certain of your danger? He said no, just a little bit. I said, well, how scared do you have to be before you start shooting at people who are your friends and your roommates? He said just a little bit scared is fine.

And that is his understanding, but that is not a reasonable, prudent person's interpretation. God, I hope not. I really hope not, and I hope people don't go around with the understanding that if you live in a home with people and you hear a sound up front, you should just run up there and start shooting because it's terrifying, but I guess some people may believe that. I don't really think so because, you know, again I'll say okay, if that's what you believe, that's fine, whatever.

But tell me this. How did Mr. Griffin come to be

executed with a .9 millimeter pressed up against the back of his head? And he says oh. I forgot doing that. You remember everything else in detail. You remember hearing the boom, and then you remember waiting the two minutes, and remember a TV falling. And even before that, two days before you remember Katerra being at your house. You remember Sam Thomas being at your house. You remember Eric being there. You remember Sam Thomas getting up to brush his teeth. You remember Katerra putting her shirt over a gun. You remember your brother called you at 2:30.

You remember all these things, but when Mr. Scott asked you about how Mr. Griffin came to die that way with a gun pressed against the back of his head, I can't remember. I said please tell this jury how you did it. Explain to them. You've taken the stand. You've explained a lot of things. Now explain to these people, these twelve people, these fourteen people. He looked at you and said I don't remember that.

I can ask the questions as many times -- and I tried to. I tried to keep asking until finally it was clear to me I needed to move on because he didn't really want to give y'all that answer. But we, we're going to follow the evidence. That's what we do.

His, his story doesn't make sense. Never will.

Never has made any sense, and it never will. We could -- we could give him another year to think about it and try to see if he can ---

MR. LUKE SHEALEY: Objection, Your Honor.

MR. SCOTT: What's the objection?

MR. LUKE SHEALEY: Objection, Your Honor, under Sixth Amendment. Impugn my client's right to present a complete and full defense. He is mischaracterizing the evidence. Talking about giving him another year to think about it.

THE COURT: Objection is overruled.

MR. SCOTT: We could give him another year to think about it. He could try his darndest to come up with a version of evidence that somehow fit this, somehow make it justifiable, but he's never going to be able to do it. He spent two hours that morning trying to come up with something. He tried to sell it to y'all yesterday, a version of it that he's modified to some degree, and it still doesn't make any sense because we're going to follow the evidence, but we're also going to call this murder, these two murders, what they are, and they're executions.

People with roommates do not run into rooms during the daylight blindly firing their guns. If they do, that is a level of recklessness and total disregard for

human life that is really off the charts. People don't do that. You know, you don't hear a unfamiliar noise living with two people, okay?

Let's suppose you have a family. You live in a home. You hear a noise during the morning time in the front that you don't recognize. Okay, you just run up there and start shooting. You kill your family members and then say oh. Oops. I thought I was getting my house broken into. Never mind the door is closed. It's not -- it's not broken in. You know, I thought somebody was breaking into my house, but as I come down this hall, it's very clear that my door is intact.

You know, no other probable means of -- you're going to hear about self-defense, that he had no other means to avoid this outcome. I said why not lock your door, call the police? You got a pistol. Just sit there and aim it at the door if you're so worried about somebody coming because he never testified that anybody was coming down the hallway towards him. It was all in the front of the house. Could've done that, right? That would have been a probable, reasonable way to handle that.

Perhaps he could've opened this door, used this as cover, and aimed down the hallway waiting for somebody to approach him. That would have been reasonable.

Perhaps he could have said Sam, is that you and Tony? Is that you? That would have been reasonable.

Tell you what is not reasonable. Running down the hallway and blindly shooting, knowing you have two roommates. Why not even just go into the kitchen and look over here to see what going on? There's, there's -- there is infinite, infinite other ways to have handled this, but he's saying this is the only way it could have ever gone down.

So, what his story is that he's come up with and he's tinkered with to some degree because he tried three different stories with Kevin Archie, tried a different one with Javontae. You'll hear his story he was telling the officers in the -- in the manager's office on the day of the incident. The day of the incident he says I see two people on the ground. I, I just start shooting, think it's a home invasion. Yesterday it was I, I just was blindly shooting around the corner until I got over them.

He did a 360 around these people, by the way.

Going back here, another thing I want y'all to look at, his story is that this corner is where he's reaching around firing, right? What do you see? What don't you see? I asked were there any shell casings in the hallway? I asked were there any shell casings over here

in the kitchen? These are where the shell casings were located, okay? Two by the door and the rest of them right around the victims, okay. And we got those pictures where they're all in between their legs and all around them. Of course, we have the close contact shooting. Some of it here on the far side of the victims over here, but there are absolutely none in this vicinity where he's saying all the shooting takes place. We were going to follow the evidence, okay?

Self-defense, for a valid self-defense -- and the judge is going to explain this to you -- first of all, Antonio Barnes must be without fault in bringing on the difficulty. He can't have any fault in bringing on this difficulty and shooting these guys.

Second, Antonio Barnes must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in such danger, okay? There's been no evidence whatsoever that he was in any imminent danger.

Again, Eric Griffin was a buddy of his, supposed, supposed. The one he thought had stolen a gun that he shared with roommates. Antonio Dash was a friend supposedly, but I don't do this kind of stuff to my friends. Anyway, he was never in any imminent danger from these two guys.

Their theory is the two of them were fighting one another. How is he in any danger, and I was wondering. What kind of home invasion happens when the two guys break in and start fighting one another? How are you in any danger if they're on the floor wrestling? I'm sure that occurred to you, too. But anyway, he's not in any imminent danger.

If he believed he was in imminent, here, here, here's what the issue is. He's saying I believed I was in imminent danger, okay, but he can't show that he was. I believed I was. If that's his theory, then it must be shown that a reasonably prudent person of ordinary courage would have had the same belief. So, that's what he's trying to sell you guys. Anybody, any of you would've done the same thing. You know, if you hear something in the front room, every reasonable person does this. Every prudent person does this. They go run in the room and blindly shoot even if it could have been their roommates. That's just what reasonable people do, and that's what he's trying to sell y'all.

Finally, Antonio Barnes for a self-defense, for a valid self-defense -- and this is his defense. It was self-defense, guys. Never mind I made a whoopsie. It was self-defense. Any reasonable person would do it. Finally, if you were to believe his story, you also must

find that -- or he must be shown to have had no other probable means of avoiding the danger. In other words, this is about his only option. My only option was to kill these people by shooting blindly into the room. That's the law. That's what the judge is going to read to you all, but that's his story. I mean, that's the gist of his story. Any reasonable person would do this.

Let's call it what it is. It is an execution-style murder. His story doesn't make sense because that ain't how it happened. He is in that room. He's shooting around them, and he's going all the way 360 around these guys as he's doing it. And again the final shot, the one that I can't really remember. I remember all the rest of them, but this right here where I pressed the gun to the back of Eric's head and fired, I can't remember that.

But that's why even if you, you know, you give any kind of credence to his story, that -- that's not what happened. He didn't blindly shoot into that room. He knew what he was doing. He was in that room. The casings show he was in that room; the nature of the victims' wounds and the placement of their wounds show he was in that room. He was certainly with them while he was shooting. That's how you get gunshots all around your body like that, right? You don't just stand on one

side and fire at them.

We're going to follow the evidence, and we're going to use common sense. We're not going to take Mr. Barnes's word for it.

State must prove beyond a reasonable doubt that the defendant killed another person -- in this case, Mr. Barnes killed two people, right, we know that -- with malice aforethought. What is malice aforethought? How can malice be shown? There's -- there are different ways. Expressed malice. Sometimes we get these kind of cases, not often. Expressed malice is before you pull the trigger, you say I'm going to kill you, Eric. He is stating expressly what his intent is: to kill. And more often we have what's called an implied malice, and they do not mean different kinds of malice. They merely talk about the manner in which malice may be shown to exist either by direct evidence or by inference from facts and circumstances which are proved. Again, expressed malice is shown when a person speaks words which express hatred or ill will for another person, or when the person prepared beforehand to do the act which was later accomplished.

We're not talking about this expressed malice in this case. We're talking about inferred malice. Inferred malice may be shown ---

MR. LUKE SHEALEY: Objection, Your Honor. He's publishing to the jury a malice charge that you expressly did not include in your instructions.

THE COURT: The court will charge the jury on the law.

MR. SCOTT: Sorry.

Malice may be inferred from conduct showing a total disregard for human life. That's the one they want to kind of just glaze over, okay? Listen to the judge's charges. Total disregard for human life, he's going to tell you that, okay, because that's why -- you know, when Assembly is simply blocked off and I'm trying to get to work, you know, and I say I don't care if it's blocked off and there's a parade, I'm going down Assembly anyway and I'm driving 60 miles an hour because I'm in a hurry to get to work and, oops, I just hit and killed two people who were in the parade. Didn't mean to. Well, really, wasn't my behavior just a total and reckless disregard for ---

MR. LUKE SHEALEY: Objection, Your Honor. That's not what malice is. That's ---

THE COURT: Objection is overruled.

MR. SCOTT: I'm telling you, okay? That's why you're going to listen to the judge.

That would be a total and reckless disregard for

human life. Even if you were to believe his story, that is a total and reckless disregard for human life.

But I submit to you we're dealing with something much more sinister. We're dealing with cold blooded, cold, black hearted, evil, execution-style murder. So, when you look at the evidence, that's malice. That's hatred. That's ill will. That's an execution murder. Or if you believe his story about blindly shooting, that's still malice because it's a total disregard for the value of human life.

What I'm telling you now is even if you believe his story and you ignore the evidence, it is still malice. It is a total reckless disregard for the value of human life. There's no other way to put it when you go shooting into crowds of people or into two people who are in your living room.

I've got to prove my case beyond a reasonable doubt, okay? I don't know what this guy is going to tell you reasonable doubt is, but ---

MR. LUKE SHEALEY: Objection, Your Honor. Attack on counsel. Sixth Amendment. I would cite *Fortune v. State*.

THE COURT: The reference is to parties by name and not this guy. Go ahead.

MR. LUKE SHEALEY: 428 SE 545.

MR. SCOTT: I don't know what Mr. Shealey is going to tell you reasonable doubt is, but here's the way I interpret reasonable doubt. And of course the judge is going to give you instructions, but I submit to you this is essentially what he's going to tell you beyond a reasonable doubt is.

What does it mean? Does it mean beyond all doubt? No, and the judge is going to tell you this. It means if you have a doubt that is reasonable based on logic, you should find him not guilty. If you think his story is reasonable, you think reasonable people would behave the way he did, then you should find him not guilty. That's what the law is. I can't make it up and, you know, I can't misstate it because he's going to tell you what it is. If I do have anything different than what he says, always obey the judge's jury charge. But I submit to you this is essentially what he's going to tell you because this is well settled law.

But if your doubt is not reasonable, or your doubt is not really logical, you should find the defendant guilty, okay? If based on the facts you are firmly convinced of his guilt, you must find him guilty. That's what the law is.

Does that mean you have to be 100 percent certain of everything involved in the case? No, and the judge

is going to tell you there are very few things in this world we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced -- I believe the judge will use that term twice, firmly convinced, in his instructions -- you must find him guilty. That's what reasonable doubt is.

If you are firmly convinced that he killed these people in a reckless disregard for human life, or he killed these people in a cold-blooded manner, that execution-style shooting we talk about, he's guilty of murder.

Used a weapon to do it. These are violent crimes. So, he's also been indicted for possession of a weapon during the commission of a violent crime. So, all that is is did he use a gun to kill these two people? He said yeah, I did. So, that -- that's what that charge is. You must find him guilty if you are firmly convinced that he used that gun to kill these two people. Malice aforethought, you must find him guilty of that charge, too.

Why did he -- why did the execution murder of these two men happen? Why did it happen? Why are those families about to spend the fourth Christmas without

their loved ones? Why do we have any of these killings we have to hear about day in and day out? It's rarely any kind of justifiable good reason that we feel good about. I mean, is it an odd fascination with guns? Is it the glorification of violence? Is it anger? Is it for clout? Is it for views? Is it for likes? Does it make a good lyric later on? Something to brag about maybe? Is it just a devaluation of other people's right to live? Is it utter disregard for the really priceless value of human life?

Something seems to me that we've gotten away from a little bit. You know, we only get one shot here, and life is just so precious, but it just doesn't seem that way to some people where they can't grasp the priceless value of a human life. It's been devalued. Is it all of the above sometimes? I told you there is no good, logical reason Antonio Dash and Eric Griffin aren't here today. They did not deserve to die; they did not deserve to die this way.

We're going to ask you to do what Paul, my co-counsel, did, he asked you to do in his opening statement, and I want you to use common sense. And I want you to ask yourself if I'm being logical and I'm using common sense, what makes sense and what doesn't make sense? What's reasonable and what's unreasonable?

And I do ask you to think about everything you've heard and everything you've seen. And I ask you to render the only verdict that speaks the truth in this case and fits the evidence. I ask you to find Mr. Barnes guilty of what he is guilty of, and that is murdering these two young men. Cut them down in the prime of their lives.

I ask you at the end of the closure of this case to deliberate. Look at the evidence. Talk amongst yourselves. What makes sense? What doesn't? The only verdict that speaks the truth is a verdict of guilty: two counts of murder, one for Eric Griffin, one for Antonio Dash, and then the accompanying charge, the possession of a weapon during the commission of a violent crime. Thank you.

THE COURT: Ladies and gentlemen, I'm going to have you go to the jury room for a short break. Please do not discuss the case.

(THE JURY EXITS AT 10:57 AM.)

THE COURT: Take about five minutes.

(OFF THE RECORD.)

THE COURT: Bring the jury.

(THE JURY ENTERS AT 11:07 AM.)

THE COURT: Mr. Shealey.

MR. LUKE SHEALEY: Thank you, Your Honor. May it please the court?

Boom. What's that? What's going on? My roommates are not here. I know they're at work. That's what they always do. What's that rumble? Were those footsteps? Crash. That's my TV.

I live in Willow Run Apartments. My roommates were robbed not two weeks ago. I'm being home invaded. People come in here trying to take my stuff, trying to kill me. What do I do? What do I do? Do I stay in this bed? Do I let them get back here? Is it fight or flight? I'm scared. I'm not going to stay in my bed and get killed.

That was my, as best as I could, rendition of what was going on in Tony's mind the morning of this incident.

We've heard a lot of evidence in this case. We've got a lot of facts. At the end, the judge is going to tell you what the law is. It's your job to apply the law to the facts as you've heard them.

This is a tragedy; this is a tragedy. No one is disputing that. Two young men died that day, a best friend of Tony and a good friend. Nothing that you twelve jurors do today can ever bring them back. Nothing. But we cannot turn a tragedy into a travesty by misapplying the facts in this case by not understanding what was going on in Tony's mind.

One of my favorite movies is *Twelve Angry Men*. It's a 1950s black-and-white classic starring Henry Fonda. He's the star of the show, of course, and it's all about the deliberation process. You have twelve jurors, and the start of the movie is they're back in the deliberation room. And, of course, back in the '50s, they're all white men, right, and they're all sitting there and it's a murder case, and they've been whipped up and they're angry. And as soon as they get back in the room, one of them raises their hand. Let's take a vote. Guilty, right?

And Henry Fonda, of course being the hero, says no. Our job is to apply the facts to the law. We need to deliberate. That is our duty as jurors. We have been tasked with this enormous responsibility. We are going to do this, this. Come over here, guys. Look at this evidence. Remember what we heard from that witness stand?

And, of course, at the end of the day he prevails. He convinces them to do their duty. He encourages them to not decide this case based on passion or their own internal bias, their prejudices, but to deliberate and render a true verdict in this case.

I'm going to ask you to do the same. I have some concerns that there are attempts to bring you down to a

sinkhole of thinking about executions, of thinking about drug dealing that had nothing to do with what happened in that living room, to thinking about a young Black man who happens to a own a lawful firearm, and maybe he owned two more previously. Nothing to do with this case except to say Black young men shouldn't own guns, Black young men shouldn't smoke weed and sell a little. That has nothing to do with this case. That is the prejudice that I'm asking you, that is the sinkhole that I'm asking you to avoid going down. Facts from this stand as applied to the law that His Honor gives you, I'm counting on you. I want to help you get through this.

The Supreme Court says that Tony is cloaked in a robe of righteousness. The only way to remove that, because he's innocent with that cloaked robe, is to find that the state has proven his guilt beyond a reasonable doubt. The state has that burden. Tony doesn't have to prove anything; I am not required to prove anything. The state has all the burden in this case. He remains innocent if and until the state meets their burden, if they can.

We are going to hear about evidence of self-defense in this case. We're also going to hear about something from the judge calls a defense of habitation, meaning defending your own home. They are similar defenses yet

they are distinctly different. I want you to listen, and I know you will listen to the judge as he describes those. They are complete defenses to any -- to the crime of murder. Only if the state can disprove the evidence of self-defense that you have heard can you even consider the charge of murder. That is the law as you will be instructed by Judge Newman.

What is proof beyond a reasonable doubt? I've got a couple of different ways I like to talk about it. Everybody knows football. To meet the burden, the state would have to drive all the way through the back of the end zone proving their case. Probable cause where Investigator Gilliam charged Tony is basically about right here. To get a conviction, they have to drive, prove, drive, and prove their case all the way right here almost to the end because right at the end is where doubt exists and reasonable doubt exists and lives right there.

We have this -- the criminal justice system in our country is the best in the world. We are the envy of the world because we don't just whip up a lynch mob and go find somebody, say you're guilty of something, and sentence them. No. We have due process. We have rights. We have the privilege of having people like yourself hear these cases. The system is designed to

prefer that there is not a conviction if it would mean a wrongful conviction. Let me say that again. The system is designed for the burden to be hard for the state. It would much rather prefer that we not have that travesty of justice. This case is a tragedy. Let's not have a travesty.

You've heard a lot about Tony's account, and I submit to you it's been consistent and constant and true from the moment that people approached that apartment all the way into the interrogation room. There have been attempts to say that he took his time to try to figure out what to say, that he had to talk to people. This is not a case of Monday morning quarterbacking. It is extremely hard to put yourself in Antonio Barnes's shoes, young man who lived in a bad neighborhood, who may not have had great perception of police. They were always at his apartment. It's a high-crime area. Not at his apartment. His community.

He just killed his best friend and another good friend, and he realizes it after the fact. He's in shock. His family members are pouring in. The whole apartment is in the parking lot. People are coming over from Hillandale. It's chaotic, it's stressful, but we want to Monday morning quarterback this and say that Tony didn't do well enough. He should have stood there

to the grieving family members of Mr. Griffin and said guys, well, let me tell you what happened. This was a real tragedy. No. It's chaotic. It was chaos.

You heard him from the stand. He was -- they were losing their minds in there. This is the ultimate epitome of shock and grief, yet the State of South Carolina in this case thinks that Tony should have done better in how he told his statement completely there. He should have taken one step in the parking lot and told his statement completely there. He should have told his statement completely there. Tony was as consistent as he humanly could be under the circumstances.

But just so you can help understand that -- because here's the thing. This is why the state wants to tell you this. Generally when someone is consistent, that means they're telling the truth, right, because the truth really only has one version. That's something we can all understand. But why the state wants to tell you he was inconsistent is because that is indicative perhaps of not truth. So, they want to make you think he's being inconsistent.

Wanda Griffin, a grieving mother. You heard it from here and testified from this stand. She was there with Ieasha Washington. Eric, for reasons unknown to

this day, quickly wanted to pull over and go to that apartment. No one knows why, but even what you heard, as the grieving mother has heard, shots and runs up there to see what's going on with her baby, upon direct and thorough cross-examination, you heard her say that Tony even admitted to her they was in there fighting. She told you that Eric was known to carry a gun before. She's here as a grieving mother. She wants to help the state. I understand that.

She recalls, if you remember, just this being traumatic and three years, and she doesn't remember a lot of things. But she remembers Tony discussing they were there fighting.

Ms. Washington remembers more. She says that when she arrived, he came out and said what are they doing here? They were fighting. Who let them in? I was in bed sleep. That came out through her testimony. That is a shocked, condensed, just verbal expression from Tony Barnes right after this happened, not expecting to even see anybody at his door after realizing he'd just killed his friends.

Kevin Archie, we heard from him, a state witness. Tony says I never talked to that guy, but even given Kevin, who the state used to try to say three different stories -- you recall that? Through Kevin they say Tony

said three different stories. One was man, I don't know what happened, story number 1. Story number 2, I was in there sleep. Story number 3, thought somebody was trying to rob me, so I started spraying. Does that make sense to you? Let me help you out. That is one story.

Man, I don't know what happened. I was in there asleep. I thought someone was trying to rob me, so I started spraying. That is one account, the same account he has given time and time again in this case in the manager's apartment, which you have a video of, later when he was interviewed at police headquarters. Time and time again.

What we also heard was I'm going to change my shirt. That -- Mr. Archie was questioned about that. That's not in the statement. He did admit that he used to work with Eric. He's a friend of Eric's. Change my shirt. What's he talking about? It's an attempt by the state to insinuate that he was trying to hide something.

Tony was wearing the same clothes all day. He testified that he got up. He was wearing a tank top that night when he slept. Went to bed late talking to his girlfriend. Gray sweat shorts. And after the shooting, he went back to his room. He called -- he grabbed his phone to call 911, which he did which you have direct evidence of. State didn't mention that.

Put on that jacket and put on some non-slip shoes, I think as he said, just his sandals. That is directly from the dashcam of the officer that's driving up.

The apartment is, like, right here. Everybody's pointing. He's standing there, Tony, wearing the same outfit when he's at the apartment manager's office. Tony wearing the same outfit at 9:05.

Mind you, also Mr. Scott didn't mention this in his first closing to you. You have a photo in evidence of Tony talking to the officers, providing his birth date, his name, his identification. They weren't asking his whole story. He was providing his info. They said step on the other side of the tape. He said I live there. That was testified to. That is in evidence. Look at the picture. Again, still wearing the same clothes. And then later in the interview room -- this picture is in evidence -- still wearing the same clothes.

Tony didn't change his clothes. He didn't have a need to change his clothes. He wasn't covered in blood. He didn't get any blood on him from shooting behind that wall. The only person who had blood on them were the people that rushed in there.

You heard from Javontae Davis. He was a strange witness, very monotone, but there's pictures in evidence of him with blood on his white T-shirt and his

basketball shorts and his sandals. Maybe that's the confusion with Kevin Archie. Man, I'm going to change my shirt. Maybe he was talking to a Javontae. I don't know. But what I do know and what you know is Tony didn't -- did not change his clothes. He had nothing to hide.

So, after he takes a moment to talk to his mother, takes a moment to go talk to his friend, get his cigarette -- Tony smokes. He needed a cigarette. It wasn't a gratuitous thing as it was inferred on cross-examination. He's panicking. He's shaking. He's in shock. He killed his best friend.

He came back, grabbed the first police investigator that they could find, and said look, it was me. He sat down immediately, talking about what had happened. That you heard from Officer McIntyre. He was right there wearing the same clothes.

Tony told them that this woman named Shakihla Smalls just came in. This was an apartment with people flooding in. Everybody's coming to the commotion. She just snatched the gun out of his hand. He's trying to help them get it back. He's showing them who she is through Facebook, telling them where she lives, what apartment number. This is not the man that's trying to hide something. He's trying to provide them the gun of

his that killed his friends. If he were looking to hide, he would have tossed that gun in the gutter.

Do we hear from Shakihla Smalls this week? No, we did not, and I'm going to ask you to draw an inference from that. Again, the state has the entire burden of proof in this case. Why did they not bring Shakihla Smalls? Because that would not have been very good for them. Because that story would not be good. Tony's story is the truth.

Why did they not bring in Investigator Gilliam? The lead investigator on this case sat here all week. He's the one who signed off on those warrants, who swore an oath to a magistrate judge saying this is a murder case. There was malice aforethought. Why didn't we hear from Investigator Gilliam? Think about that.

We didn't hear one word from Investigator Gilliam about that six hour encounter at the police station that was recorded on video that you heard Tony testify about where he told him what happened and Gilliam didn't want to believe him, where he told him there was a whole beast of stuff going on in my apartment, that I was scared, that I was sleep. I thought I was being home invaded. There's a whole record of that, a wealth of information that Gilliam could've provided on that.

Now, the state doesn't have to call every witness.

Mr. Scott will tell you that, but to not call the lead investigator on a case that had that interaction with the man they want you to convict on murder, unconscionable.

But we did hear from this more, more or less informal encounter where Tony's talking to McIntyre. He said he was emotional. He said that he -- again, the direct quotes from Officer McIntyre. He told me he was asleep, awakened by a loud bang, heard a commotion, listened, listened for his roommates, heard the TV crash, got up from bed, and discharged rounds. Yeah, that's what he told the police as soon as he's having that formal sit down. Same morning.

And you have in evidence and you will hear it, too.

(WHEREUPON, A VIDEO OF INTERVIEW IS PLAYED FOR THE JURY. AUDIO IS NOT INCLUDED.)

MR. LUKE SHEALEY: This is my homeboy.

Now, Tony, he's rough around the edges. He may not be from the same places some of y'all are from. He's definitely different to lots of members of law enforcement and people that are prosecuting this case. He calls his friends bruh. He curses a lot, but that is real emotion the first time he encounters the police, real sincerity about what happened.

Prosecution wants you to think that he's just got

this manipulative -- manipulation going on of some magic story that he has finally concocted. No. Let me help you out again. Pull yourselves up by your bootstraps as he tries to tell that to you again. Do not decide this case on passion and prejudice but the facts. Your sense of logic and reason tells you that this man is deeply emotional, distraught about what just happened.

And you heard from him. He broke down crying talking about killing his friends. You think that was scripted? You think that was something that I could engineer? This man with the tough exterior who's sitting here talking about the worst day of his life to a bunch of strangers in a courtroom of people, half of which love him, half of which hate him, is there any dispute that that was not sincere? No. No.

The state called Sam Thomas, and I was surprised by that. Tony's roommate, his other good, long, best friend, the other man on the lease. He's got nothing to hide. He confirmed to you several very important things, and there's a picture of him that's in evidence of him talking to Investigator Gilliam when he got back.

He was not there that day, and they confirmed that it was their routine and habit, given that he -- that they had one car between them, Sam's car, to have Sam drive Dash to work every day where he worked at Wendy's.

Tony was not working at that time. He had recently quit his job; he didn't like it. He was in the process of looking for new work. Did you hear the state say his job was to be a drug dealer? How did that make y'all feel? Did that make you feel like he wants you to decide this case for an appropriate reason, or does he just want to call a young Black man a drug dealer and make you mad at him? Yeah.

He confirms the apartment would have been empty. Tony would have thought no one was there because that's the way it was during that time of day with their habit and routine.

He talks about two days prior a gun going missing. Let me tell you why this is important to this case. Let me tell you why we bring this up. We bring it up because it was brought up to police when Tony was arrested by Tony. He speculated. He has no idea why the people he now knows as Dash and Griffin laying dead on the ground, why would they have been locked into that fight to the death. He has no idea why. That is -- that's why he thought he was being home invaded. He tells that to McIntyre. He tells that to Gilliam. They don't believe that. They don't want to believe that. You got two bodies. You are getting locked up, young man. We don't believe this.

Tony's telling them. Did they follow up on it? Did they look into it? Did you hear anything about it other than through us? No. Did they try to find the gun? Would that gun that's missing have matched some of the evidence in this case? I don't know, but he told them at least to try to explain because them fighting to the death in his living room is why he thinks he's being home invaded. It's why he thinks all this crashing and holes in the wall -- that's why we wanted you to understand that there was this brewing conflict between Dash and Eric. He recalls that encounter, that accusation, not by -- it wasn't Tony's beef.

You've got some text messages in here. Mr. Scott tried very hard to get Tony to say it was his beef. They don't have a motive in this case. They don't need a motive, but it certainly helps paint a real story, so they're trying to make it like it's his gun. It's not his gun. We responded and put in a different text that shows that Tony's talking about it being Dash's gun, but it is a gun from the apartment, and Dash is upset.

You heard from Sam, the state's witness, that one day prior to this that there was a direct confrontation by Dash against Eric accusing him of this, saying you stole my gun and that he actually had Tony's gun in his hand while he was arguing about this. Tony talked about

this.

Listen to this. As the state tries to fill you with the concept that Tony is a young man, a drug dealer who's incapable of reason, the day prior, Tony testified he's awakened, this time not to the sounds of a home invasion but to the sounds of his familiar roommate voices arguing. So, he doesn't just go out blasting as the state would have you suspect that he, he might do any time there's a noise in his house. He hears it and goes uh-oh. My roommates are arguing. So, he gets up. It wakes him up. He walks down the hall. He testified, consistent with Sam, that Dash was present, Eric was present, a young woman named Katerra, and Sam was there. And Tony walked up and saw this argument getting heated, this confrontation from Dash to Eric, and Dash had his gun at his side, Tony's gun. Tony grabbed that gun, de-escalated the situation, showing immense restraint, reason, and, in his words, tried to play the peacemaker. Y'all talk it out. It wasn't talked out, though. It was left unfinished with Eric leaving basically with no plans to come back because he's been accused of stealing something of value from his roommate -- or from a friend of his.

And the next day during the encounter, you have to think about what Dash would be feeling after that the

very next day. Now, mind you, his schedule was to go to Wendy's, but he had called in sick for unknown reasons. He didn't go. No one knows. Tony thought he was going to be gone. He's there and when Eric knocks and Dash answers, that conflict is raw, and the rest unfolds in that living room.

Sam also confirms the other thing that is going on in Toby's mind is that there was a robbery of Sam and Dash very recently prior to this. We bring that up because Tony told that to police. Tony told that to Investigator Gilliam, saying he was scared. We know that this is what happens in our neighborhood. It's not the best neighborhood. It would be unsafe to not be armed in that neighborhood. It happens all the time.

Sam told them. He told them. They didn't care because there's two bodies, and, son, you're going to jail and we're going to ask for a murder conviction on you. We're going to call you a drug dealer and say that's all you care about. It has nothing to do with the nature of your neighborhood and what you know to be the reality in your neighborhood if you are not vigilant in your own home, in your own bed, while you're walking to The Corner Store. That's why we brought that information to you. Follow the facts, I think we just heard.

I want to tell you what murder is. You're going to be asked to consider that. Murder is the unlawful killing of another human being with malice aforethought. Malice is hatred, ill will, hostility towards another person. It's not recklessness; it's not a general disregard. It's evil in your heart for that person in that moment.

Sometimes I go deer hunting. Not often but when I do and I see a deer that I want to kill, I train my sites on that deer, and I think should I kill it? Did you need the meat? Is it big enough? Has it lived enough? And if I decide I need that meat and it's a big enough deer, I'll make that calculated decision to shoot. That's malice. That's malice in my heart for that deer.

Tony, as you heard, had fear in his heart, panic, not malice, not hatred. Fear in his heart at the time he pulled the trigger. That is all you're asked to decide. At the time he turns that corner pulling the trigger, what is in his heart? Is it a calculated evil for something, or is it fear of being home invaded? Fear is self-defense. Fear is not compatible with malice.

I want to talk to you about self-defense, but before I talk to you about self-defense, I want to talk

to you about the law of defense of your own habitation, defense of where you live. Judge Newman is going to give you a separate instruction on that, and I didn't have enough time to put it on my slide. Let me tell you what that is.

In the world of what you have to decide, you must first feel that the state has disproved defense of habitation. Put that to the side, that they have disproven self-defense beyond a reasonable doubt. Put that to the side. And then you have to dig into the meat of whether they've proven a case of unlawful killing with that evil, that malice. Only then could you possibly convict in this case.

So in the hierarchy defense of habitation is the ultimate defense. You're going to hear how it's different. In self-defense, you have to show that you didn't start some trouble, you didn't bring about the difficulty, that you were in danger, or reasonably thought you were, and that you had no other means to avoid the problem, and we'll talk about that.

But for defense of your own habitation, when someone is in their home, the key distinction is that you do not have to show that you were attacked. You do not have to show a reasonable belief that you were about to be attacked, okay? I'm going to say it to you again

because this is important.

Defense of your home -- because we have special duties when we're in our own beds at night, special protections for what should be the safest place in our whole universe -- you don't have to show that you were under attack. You don't even have to show that it was a reasonable belied that you were under attack. That is defense of habitation. And if there is a trespass or an intrusion into your home, you are allowed to end that intrusion through the use of deadly force if necessary. That is what the law of South Carolina says about what citizens are entitled to do.

Now, I'll tell you this. You have a duty to follow the law. It may not be what you like in your heart of hearts, but it is the law as the judge will tell you, and you have a duty to apply the facts that came out of this case to that evidence. Tony does not need to show that he was under attack, just that he was in his own home, and that there was an intrusion into the sanctity of his home, and he decided to use deadly force to end that intrusion.

If you can get past that beyond a reasonable doubt, which I would submit you will not, you consider self-defense. Self-defense also applies in someone's home, but it can apply elsewhere, but here, because this

incident happened in the home, it applies in Tony's home that he didn't bring about this conflict. Classic example of that, someone can't go rob a liquor store and when the clerk pulls out a gun to defend his liquor store, you can't shoot him and claim self-defense is the example of bringing about the difficulty.

Tony selling weed occasionally to support his smoking habit is not bringing about the difficulty, okay? There's been no evidence of that in this case. If it is mentioned to you again, it's to drag you down to a sinkhole to decide this case on an inappropriate fact. You cannot bring about the difficulty if you're lying asleep in your bed.

Was he either in actual imminent danger, or did he believe he was in imminent danger of death or great bodily injury? In this case, Tony reasonably believed he was in imminent danger of death or great bodily injury. From what he heard waking up in his bed -- knowing his roommates should not be there, listening, being reasonable, listening, doesn't hear familiar voices like he did the day before, crash of the TV, rumbling, violent sounds -- he had the right to act on appearances.

Mr. Scott left this out for you. The judge will tell you when you're considering self-defense, this is

the key to this case. We're spending so much time talking about if Tony is reasonable. You heard the testimony on the stand. Tony, are you paranoid? Are you paranoid, man? Do you think -- how much -- how much do you think is required to be scared? A little bit? Little more? Huh? Huh? You're unreasonable. Tony told you I was scared as hell. Those were his exact words. You have to decide if that's reasonable under those circumstances for Tony.

But he may be mistaken. It is enough if the defendant believed he was in imminent danger, and a reasonably prudent person of ordinary firmness and courage would have the same belief. Fancy legal words: average folks. Reasonably prudent, ordinary folks just like Tony. Would you have had the same belief if you're lying in bed and heard boom and crash and rumbling? Yes. The defendant has the act -- has the right to act on that appearance. He doesn't have to have eyes on the situation. On the appearance of that that, based on what he's hearing in his room, knowing his roommates aren't there.

Even though the beliefs of this defendant or a defendant may have been mistaken, most crucial thing. If you -- if you somehow get past the defense of habitation and you're analyzing self-defense, he's

allowed to be mistaken as long as -- as long as his belief was reasonable in the first case, okay? He's allowed to be mistaken.

Our law understands the world is not black or white, good or bad. There are not perfectly scripted self-defense situations. People encounter all kinds of stuff in this world that don't fit into a neat, little box. And our law understands that they should not be punished for not fitting in somebody's neat, little box.

The last prong is that there is no other way to avoid the danger. Well, you can't avoid the danger if you're in your bed. Again, you heard some more Monday morning quarterbacking from Mr. Scott through the prosecution. Well, could he have locked his door? Well, could he have pushed the mattress up and maybe hid there for awhile? In that neighborhood, if Tony lets the intruders who he thinks are there get back to his room, he's going to get smoked. Those are his words. Killed. You don't have to wait.

You're going to hear from the judge that you're allowed to meet the threat. Self-defense is the law of self-preservation. You do not have an obligation to wait in your bed cowering. That's an attempt to confuse you with what the law is and Monday morning quarterback. But you have no duty to retreat in your own home, not

even against somebody who lives there as well. That's critical. Don't be confused. You don't have a duty to retreat in your own home. All the elements of self-defense have been met if somehow you get past defense of habitation.

Spent so much time trying to have you think about Tony being unreasonable. What he heard produced that hole in the wall with the busted phone jack. Think about the immense amount of power and force it took for a body to be slammed into that wall. That's what was going on in his living room. That's why he reasonably believed he was home invaded.

There is his TV just like he told police day one soon as he talked to them. Crashed. He referenced how he liked to play video games. There they all are. There's the table the TV was sitting on. Crashed. There's no other furniture in that apartment other than two foldout church chairs. He would have heard every bit of that echoing through the apartment. That is why he reasonably believed he was being home invaded.

Why did we talk so much with the SLED agent Paul Greer, the firearms analyst? Why the talk and spend so much time with Dr. Monroe, the pathologist? Because they have facts and data and facts and data do not lie. There's no bias in facts and data in science. And all

the objective evidence in this case showed that there is another gun involved in this case. The state does not submit that Tony has two guns that day. They just don't want you to think about it.

We have thirteen distinct bullet wounds that you heard from Dr. Monroe in this case, seven on one, six on the other. That's thirteen. There's only seven shell casings. The .9 millimeters semiautomatic gun that Tony fired that day seven times each time would have ejected a shell casing onto the ground, and they collected all of them. This was in a enclosed apartment living room when those shell casings were put out on that floor.

Yes, there was traffic. EMS came. Family came. Curious onlookers came, but no one picked up the remaining six shell casings. That did not happen. It's feasible that maybe one might have gotten kicked off the balcony, but six? That does not pass the smell test, ladies and gentlemen.

We are missing a gun that shot six times. I bring that to you. I don't have enough information to blame someone else for a killing in this case, but I bring it to you because police should have looked into that. It helps to corroborate that it was a deadly struggle in that living room between Eric Griffin and Mr. Dash.

I talked to Paul Greer. Two, we have two entry

wounds into Mr. Dash's head. They did not exit. Mr. Scott's right. One is right here on the left temple. The other is back here. Each one are immediately incapacitating. Dr. Monroe told you that. Instantly someone would not be able to function. It does not stand to any kind of reason that someone would need to be shot another time after taking one of those shots. They come from different directions. The same gun did not shoot both of those bullets.

You have this in evidence, item 22. I talked a lot about that with Paul Greer. It was inconclusive. We talked about the different terms, whether something was a hard positive match, an absolute negative match. Something might be unsuitable, meaning just can't get any data off of it. Inconclusive means they don't know. It could -- that's what the report said and I asked him -- have matched another gun. It could have been identified to another gun that they did not have in evidence. It was not so damaged that they couldn't pull identifying data off of it. And what you heard is that it could have belonged to another .9 millimeter, a .38 Special, a .357 Magnum, and that that last characteristic -- and we use that term a lot -- could easily have been fired by a revolver, okay?

For those of you that don't know much about guns,

when you shoot a revolver, it does not eject shells like a semiautomatic. Paul Greer talked about that. They stay in that little wheel, that little cylinder unless you take the time to empty them, and that's not very prudent in the middle of a heated fight to take the time to unload your shells.

Common revolvers hold six. We have thirteen distinct bullet wounds, seven shell casings. We're missing six. You guys understand what I'm saying?

Here's how we know that Tony's gun did not fire all of these. Wounds. You have the pictures. You've heard the testimony. When Tony's gun was recovered from Shakihla Smalls's apartment where she had quickly tucked it under her mattress, it was recovered with six live rounds in what we call the magazine, and one was in the chamber, meaning it had already been cycled up and was resting there. Police being prudent, they took that out when they seized it, and you see that picture that you will have, and I want you to look at one hand of Investigator Smith who collected that gun holding six and one to the side. That's seven total.

All right, so I did a lot of that math with Paul Greer, and you guys might have been going why does he keep talking about this? Maybe some of you were on to it at the time. But knowing that there's thirteen shots

here and then his full magazine capacity, had it been loaded to the absolute maximum, would be seventeen in that magazine, and it has the listed numbers, one through seventeen. That's all it can hold and one in the chamber. That's eighteen total. So, if we have thirteen shots, seventeen -- seven, which is what was left in the gun, considering the thirteen shots they claim was fired by that gun, equals twenty. The gun only holds eighteen maximum.

Even if they want to take away one of those wounds, I talked to Paul -- I mean, Dr. Monroe. He mentioned his report. He never, as scientific as he is, he never said that any of those wounds, as he said, were slam dunk through and through from one body to the next. Otherwise, he would have noted it. He kind of equivocated and on -- you know, thinking now upon testimony here, maybe one, although he wasn't certain enough to state it in the report.

Well, let's do the math on maybe one. Maybe one means let's just say twelve wounds because one's a pass through. Still, the gun was found with seven bullets that only holds eighteen maximum. That's nineteen. The math doesn't work. That gun would be impossible to shoot all those rounds and still be left with that level of bullets in it. There's only seven shell casings.

They don't even want you to think about the shell casings. They don't even want you to wonder where the other six shell casings are.

I don't bring this up because I have conclusive evidence, but I want you to consider what was in the heart and mind of Tony. We have brought you all the evidence of this conflict between Mr. Dash and Mr. Griffin about the missing gun that was so heated the day before, Mr. Dash had to have a gun snatched from his hand in the middle of an argument.

Now, no one knows why Eric said turn over there that day. No one knows, but they only shared one car. That car was gone with Sam at the doctor's appointment. So, if you're driving by and you don't see the car that you know they all share, maybe you think you can talk to Tony alone, and you can tell him your side of the story again about the gun. But what he didn't expect to encounter was a still angry Dash who didn't expect this man to be at his door, the man that he had a gun in his hand while heatedly discussing this situation the day prior, and it was on.

I don't think there was a whole lot of discussion. Why the F are you back over here is what I think happened. And you had this brutal fight unfold, including tearing out of earrings. And I think Dash was

losing that fight. We talked about the wound to the back of his head. Somebody hit him with something extremely hard. Dr. Monroe said it could be from a pistol butt. It could be from any hard, hard object. It's not from your hand. He had blunt force trauma over his left eyebrow. I submit to you I think Dash was losing that fight, and Eric was on top of him, and we're missing shell casings and projectiles, and there's a gun in Mr. Dash's head that does not belong to Tony -- or bullet in his head that does not belong to Tony. I think it's quite possible by the time Tony got out to end this threat, Mr. Dash might have already just been killed.

But regardless of that evidence, I can't say that for sure, but I know police didn't look into it. And I know they laughed at the idea that he thought something was so terrible going on in his living room that he just should have done better. He just should have sat around a little more, assessed it.

We've got these mannequins over here, and I'm not going to hurt them in any way, but I think they are illustrative of this case. Tony told you that when he came out after realizing that the threat he thought was home invaders were actually his good friends, and Mr. Dash was lying on the ground face up and that Mr.

Griffin was on top of him with his back exposed almost -- Tony's words were like they were kissing. That was kind of strange, but that's what he said.

(A PAUSE.)

MR. LUKE SHEALEY: Now, does this make sense for these wounds? Mr. Scott is counting on your passion and your prejudice regarding this contact wound.

Sorry, Mr. Bowen.

He's counting on that. He's forcing you to stare into the hole of a young man's head just so he can rile you up. There is no more malice in that wound than any other wound, but it's sexy. We get to talk about execution and really drag you down into that swamp.

But Tony told you that when he walked down that hall against the wall and turned the corner, that he just started shooting. Actually, he said he started shooting before because he was fearful of what was there, and it was against the wall, and was moving forward. That is not inconceivable. He didn't remember the mechanics of this white hot moment of fear and panic in the twilight hours of his home. He's not expected to. He just knows he shot.

There's no evidence that this was some kind of cartel execution, stand up kill shot. Dr. Monroe told you, and I know you were listening. All I can tell is

that the barrel of a gun was pressed up on the skin. He can't tell you the position of anybody. He only knows about this. He doesn't know the position, but this is entirely consistent with what Tony said.

But is it consistent that Mr. Dash would have this left temple wound coming in like that from that position and also have a head wound on the other side of his body? No. No.

(A PAUSE.)

MR. LUKE SHEALEY: Apologize, gentlemen. Not trying to break your props.

Sometimes when you hear about red herrings, I don't want you to be fooled by that. In the old common phrase, the red herring is something that misleads or distracts from a relevant or important question. It might be a logical fallacy or a literal -- literary device that leads readers or audiences towards a false conclusion. It may be used intentionally as in a mystery fiction or as part of a rhetorical strategy. It may be used in argument. This is a red herring.

You know what a red herring is? A picture in evidence of Tony posing with guns, guns that had nothing to do with this, guns that are being only sent to your viewing faces to say he's a young Black man in America, and we need to get him off the streets. He's a bad guy.

You heard Mr. Scott up here talking about crime in our community. Yes, we do have crime in our community. That is not your task today. Do not go down that sinkhole. You have one job at hand: that is to decide the facts and the law of this case.

The red herring is the fact that Tony sold drugs to support his habit. It has nothing to do with this case. This was not a drug deal gone bad. Just to make you hate a young Black man so that we will lessen him, debase him so that you will be okay thinking that he doesn't enjoy the same protections and defenses as the rest of our state. You're not going to fall for that trap.

The state has the awesome power of proving their case beyond a reasonable doubt, and it is such a squishy, hard thing for good folks who have never sat on a jury. This is it. This is it. Guilt beyond a reasonable doubt. All the rest will equate to a not guilty verdict. He's proven not guilty. We have no burden in this case. If the evidence proves to you that he is not guilty because of defense of habitation, self-defense, or the fact that they have not proved malice, sure. That's not guilty. Highly unlikely? That's a not guilty verdict. Less than likely? A not guilty verdict. Probably not? That's not guilty.

Unlikely is not guilty. Possibly not is a not guilty. May not be is a not guilty. Perhaps, suspected, possibly guilty? Still not guilty. Probably guilty? Not guilty. You sit there and think guilt is likely, you wrestling with that means you have doubt because only likely, that's a not guilty. Guilt highly likely? Still not guilty. Only here with guilt proven beyond a reasonable doubt in our system that prefers a lack of conviction over an innocent man being convicted, only then could you find him guilty, only then.

I leave you now. Our system is set up where Mr. Scott is going to have the last word to you, but I ask you to consider what I've said. I want, I hope that I've given you some strength and some power and some tools to resist against what you will hear: that he's a drug dealer, that he should have done better, some Monday morning quarterbacking. If Mr. Scott stands up behind that mannequin again, standing like this, in your minds ask why. There's no evidence of that. Tony, whatever mental state he had when he shot, was the same for all of it.

Pull yourself up by your emotional and mental bootstraps and hold strong. You have an awesome responsibility, and I know you will do your duty. I know you have listened this whole week. You will apply

the facts to the law as Judge Newman tells you, and if you do that, you will find Tony not guilty in this case.

THE COURT: Let's all stand for a moment.

(A PAUSE.)

THE COURT: All right. Mr. Scott.

MR. SCOTT: When Mr. Shealey kind of had his dramatic moment where he sat with his eyes closed for some period of time and then he screamed as loud as he could, was anybody tempted to grab a gun and start shooting? I didn't see anybody do that. Mr. Shealey also said sometimes he looks at deer and he makes a decision whether they have lived long enough. We don't do that with humans. We don't look at another human and say, you know, I think Eric Griffin's lived long enough. I'm going to shoot him in the back of the head.

And they don't like me talking about that. They say there's no evidence of it. I just heard him say that, but y'all heard a pathologist talk at length about that wound. It's an inconvenient fact for them. They don't want me to talk about it. I get it. I would not be doing my job if I didn't talk about it. My job is to give you the evidence, not to hide it.

Most of his closing argument was Mr. Scott is the boogie man because all Mr. Scott wants to do is tarnish the image of a young Black man. You heard that. That

is not my job. My job is to see that there's some justice for two dead Black men who didn't deserve to die this way. I do not put words in Mr. Barnes's mouth. When he tells me I'm a drug dealer, I sell drugs, and there are people in and out of my house all the time because of it, and I choose to do it in a dangerous neighborhood, I'm going to tell you guys what he said. This is my job.

If he says I like having guns and posing with them, this is something I think is cool, and they say guns have nothing to do with this case, well, what were all these bullets we were pulling out of these two men? Guns have everything to do with this case.

And isn't that part of his story? A gun was stolen. And isn't that their theory, that's what this fight was about? I would not be doing my job if I didn't produce evidence for you people. That's what I do; that's my job.

I know you were paying attention, and what we say is not evidence, okay, but what you just saw was a defense attorney giving you theories that there was absolutely no evidence of, no evidence. He just did a demonstration with my manikins that I've worked so hard to put together and he broke them, but let me show you what he just did to mislead you all, okay?

This is Mr. Dwyer's body cam footage, All right? You saw what he did. He laid Mr. Dash on his back, and then he put Mr. Eric Griffin on top. Wonder why he did that. Was it to explain the injuries when there is no explanation? I can't answer that for him, but I can assure you.

(WHEREUPON, EXCERPT OF BODY-WORN CAMERA IS PLAYED FOR THE JURY. AUDIO IS NOT TRANSCRIBED.)

MR. SCOTT: We will follow the evidence. Not what a defense attorney tells us because when we look, we see Antonio Dash lying on top of Mr. Eric Griffin.

(PLAY RESUMES. AUDIO IS NOT TRANSCRIBED.)

MR. SCOTT: The person on top is Antonio Dash. Of course, you'll have still shots as well. The person on the bottom is Mr. Eric Griffin. I don't know why he reversed it. Was his attempt to explain the injuries? I don't know what his motivation was, but what you just saw was a mischaracterization of the evidence in front of you. We're going to choose to follow the evidence, and it's ---

MR. LUKE SHEALEY: Your Honor, I object. *State v. Parker*, 391 SE 606.

THE COURT: Sir.

MR. SCOTT: I don't know what the objection, *State v. Parker*, is.

THE COURT: I don't know your -- Mr. Shealey, I don't know what you're talking about.

MR. LUKE SHEALEY: That's just where the Supreme Court says it's generally improper for the prosecutor to denigrate or accuse defense counsel of fabricating a defense. That's what I'm talking about.

THE COURT: Objection is overruled.

MR. SCOTT: Thank you, Your Honor.

As you see, when you put the manikins -- he reversed them, and we don't know why he did that. Was it to explain the injuries? I don't know, but it's rich that he had this slide about a red herring. It's rich because a red herring, what he describes, is an attempt to mislead or distract.

A red herring would be, I don't know, continually harping on your client's emotion that day, talking about, well, he cried. And maybe yesterday I think there was some attempt for him to show emotion on the stand, too, but you guys get to judge credibility.

I submit to you harping on defendant's emotion, you've got the still shots of him minutes after this. You can judge for yourself. That would be a red herring. That would be a distraction from the evidence and the facts, okay?

Wild speculations, talking about evidence that's

not in the record, talking about a revolver and bullets he said come from another gun when you heard the expert said no. We were inconclusive on a couple fragments, and the reason was that there just wasn't enough to come up with a yes or no answer, and he characterized as definitely coming from another gun. That's not what that SLED agent said. It's inconclusive. He said otherwise.

Now, he did kind of back down a little bit, and I think he said I can't -- I have no conclusive evidence, but he's spitting it out to you anyway. That is a red herring. Commenting on Eric Griffin owning a gun in the past, that is a red herring. That has absolutely nothing to do with this case. I would have thought Mr. Antonio Barnes, when he heard a gunshot, would have told you. Are they saying Antonio Barnes had two guns? I don't know what they're talking about. There's no evidence of it. I don't have any evidence Mr. Barnes had two guns. If he did, he was able to get rid of it because we only have one. That was the one that ended up under Shakihla Smalls's bed. The only cases we have come from that gun. The identifiable bullets, including the one that came out of Eric Griffin's head, go back to that gun. So, it's rather rich when he brings up the slide about a red herring.

I submit to you those arguments were to distract you from the inconvenient truth. We're going to follow the evidence.

What do you see in this picture? You come out of this back room, you walk down the hall. How are these bodies positioned? Of course, we saw whenever Mr. Dwyer comes in, Dash is on top of Griffin, but look at their positions. What do you see? I don't disagree with Mr. Shealey that at some point when an officer stops and he does give -- Mr. Barnes does give his name and his date of birth. He says he lives in the apartment but, as he said, there are residents all over the place that live in the apartment. I'll tell you what he did not say. He didn't say I'm the shooter until two hours later.

In his analogy -- he says I knew my roommates are not there. Listen to the recording of him when he's talking in the manager's office. He says I thought Sam Thomas should have been there, but then on the stand yesterday he says I don't think Sam Thomas would be there. Look at what he's saying during the time. There is -- there is inconsistencies in his statements. He tells a Javontae Davis I wake up, there's two dead bodies. I don't know what's going on.

This fighting to the death, that is a term coined by the Shealey Law Firm that is never offered up in

evidence. Nobody ever said anything about fighting to the death. The evidence we have of fighting to the death is an overturned TV and a bit of sheetrock that has been dented in. A fight to the death, I don't know how many times I heard him say that.

He doesn't tell me what witnesses I call. He's right. I don't tell him what witnesses he calls. Each side gets to pick the witnesses they call. Of course, Investigator Gilliam's right there, All right? Each one of us decided to call some law enforcement agent. He's right there. Nobody's hiding anything. Unconscionable, he calls it.

You know, I'm thinking about these inconsistencies, and they are noteworthy. He just brought -- reminded me when he played the video. You know, yesterday Mr. Barnes had great detail about the day that that gun went missing, and he talked about little bit about it earlier, and he remembers Katerra being there, putting the shirt over the gun. Remembers who all was there, and he remembers what time his brother called. He remembers that Sam Thomas went to brush his teeth. But if you just listen to the video that he played from the office manager, he said I wasn't there when the gun was taken.

What is it? I mean, that's the problem here, you

know. I would like a consistent version of the defense. I don't always get that. I'm just saying that, but I would like some consistency. Is that so wrong? And if there are inconsistencies, again it's my job to bring that to your attention. I mean, geez, don't beat on me too much for doing my job. It's what I do. I am tasked by this court to present evidence to you and if he doesn't like it, I'm sorry.

You know, he, he gave you his definition of malice, and again that's the inconvenient part about it. He leaves out the fact that malice can be a complete disregard for human life. He didn't include that in his malice definition. I don't know why, but when this judge tells you about malice, he's going to tell you malice can be shown from hatred and ill will, but it can also be inferred from the complete disregard for the value of human life. Ask yourselves why he left that out of his definition when he described malice to you.

Some things are inconvenient, but we got to follow the evidence, and we're going to listen to this judge. I tell you what. He's not going to talk about football when he talks about reasonable doubt, I promise you that. He's not going to show you a diagram of a football field. He's going to tell you reasonable doubt means you are firmly convinced of guilt. He's not going

to give you a cute diagram like this. He's going to tell you reasonable doubt is being firmly convinced and being reasonable.

I'm going to sit down, you guys. I just -- when you sit down, the worst feeling is oh, I forgot to say that one thing, but -- and I know y'all are probably, I know, you're a dead horse now, but it's just, this is an important case. I mean, clearly. Any time there are two dead bodies and any time there is somebody accused of killing those two people, it's important. It goes without saying. There's a lot of people in this courtroom that find this important. I don't envy you guys, but I just, I plead with you. Use common sense. Use reason.

What does that picture show you when you look at his version of events? What does those wounds show you? I mean, I hate to keep harping on this thing, but that is highly, highly relevant. This is Eric Griffin right here. The wounds to his right -- the back of his right head. The only verdict, the only verdict that speaks the truth, the only verdict that fits the evidence -- and we all said we were going to follow the evidence. That's all I can ask you to do. The only verdict that is just and speaks the truth is a verdict of guilt on the murder of Eric Griffin, on the murder of Antonio Dash, and then

the weapons charge. Thank you.

THE COURT: Ladies and gentlemen, I'm going to send you to the jury room for another break, about five minutes. Do not discuss the case.

(THE JURY EXITS AT 12:28 PM.)

THE COURT: We'll take a five minute break. When we start, the doors will be locked, so don't think you can come wandering. If you're going to be in, be in and in your seats in five minutes.

(OFF THE RECORD.)

(COURT REPORTER REVIEWS EXHIBITS WITH COUNSEL DURING THE BREAK.)

THE COURT: You may be seated.

If you will bring the jury.

(THE JURY ENTERS AT 12:38 PM.)

JURY CHARGE

THE COURT: Madame Forelady and members of the jury, you heard the testimony, received the evidence, and heard the arguments of the state and the defendant. I will now explain to you the law that applies to this case.

Under the constitution and laws of South Carolina, you are the finders of the facts. I do not have the right to pass upon the facts or even to express any opinion that I might have as to them because this is a

matter solely for you go, the jury, to determine. As jurors, then, it is your duty to determine the effect, the value, and the weight of the evidence presented during this trial.

As the trial judge, it is my responsibility to preside over the case and to rule upon the admissibility of evidence offered during the trial. You are to consider only the testimony which has been presented from this witness stand, together with any other exhibits which have been made part of the record, as well as any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. And as the presiding judge, I am the sole judge of the law of this case. It is your duty as jurors to accept and apply the law as I now state it to you, then deliberate in an effort to reach your verdict.

And finally, I charge you in this regard that you should not be concerned with what you think the law ought to be but what I tell you that the law is.

You are also the judges, the sole judges of the credibility -- that is, the believability -- of the witnesses who have testified and of the evidence offered. In considering credibility, you may take into consideration many things such as the demeanor or manner

of testifying, whether the witness had reason to be biased or prejudiced, and whether a testimony was contradicted on the one hand or supported and corroborated on the other hand. You may believe a small portion of a witness's testimony and disregard the larger or vice versa. All these things you will consider, bearing in mind that you should give the defendant the benefit of any reasonable doubt. It becomes your duty as jurors to analyze and to evaluate the evidence and determine that evidence which convinces you of its truth.

Now, normally a person cannot give opinion testimony. When a person testifies, they must testify as to what they either saw, heard, or sensed by smell, or something of that nature. However, there is an exception when someone is qualified because of education or experience as an expert witness. These expert witnesses are permitted to give their opinion in certain areas if the court qualifies them in that way. To give opinion testimony in that area does not mean that you must accept the opinion, but it is evidence for you to use in any way you see fit and give it the weight you believe is appropriate.

Now, the fact that the defendant was arrested, charged, and indicted in this case is not evidence and

cannot be considered by you as evidence of guilt. Nor does it create any presumption or inference of guilt. The indictments are simply the formal written instruments which contain the charges made against the defendant. The indictments are the formal documents by which this case is brought into court.

The defendant, Antonio Vashon Barnes, Jr., has pled not guilty to the indictments, and that plea puts the burden on the state to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the

defendant which remains with the defendant until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory; it's not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of guilt of the defendant beyond a reasonable doubt. The state must prove the defendant guilty beyond a reasonable doubt.

So, what is a reasonable doubt in the law? A reasonable doubt is a doubt which makes a reasonable, honest, sincere, and conscientious juror to hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the guilt of the defendant.

Now, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendant is

guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must then give him the benefit of the doubt and find him not guilty.

The indictments in this case allege three separate offenses against the defendant. The indictments are, number one, murder of Antonio Dash; indictment number two, murder of Eric Griffin; indictment number three, possession of a weapon during the commission of a violent crime. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment.

The defendant, Antonio Vashon Barnes, Jr., is charged with murder of -- with the murder of Antonio Dash and Eric Griffin. The state must prove beyond a reasonable doubt that the defendant killed -- the state must prove beyond a reasonable doubt that the defendant killed Antonio Dash and Eric Griffin with murder -- with malice aforethought.

Malice is hatred, ill will, or hostility towards

another person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to inflict an injury, or under circumstances that the law will infer evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proven.

Expressed malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show that the deed was within the mind of the defendant would be expressed malice. Malice may be inferred from conduct showing total disregard for human life.

The defendant is also charged with possession of a

weapon during the commission of a violent crime. The state must prove beyond a reasonable doubt that the defendant was in possession of firearm during the commission of a violent crime. A firearm means any weapon which will, is designed to, or may be readily converted to expel a projectile.

In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of committing a violent crime. Murder is a violent crime. The state must prove beyond a reasonable doubt that the weapon furthered, advanced, or helped in the commission of the crime.

The defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the defendant not guilty. The state has the burden of disproving self-defense beyond a reasonable doubt.

If you have a reasonable doubt of the guilt of the defendant after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the guilt of the defendant after considering, considering all the evidence, including the evidence of self-defense, then you must find the

defendant guilty.

The following elements are required to establish self-defense. First, the defendant must be without fault in bringing on the difficulty. If the conduct of defendant was the type which was reasonably calculated to and did provoke a deadly or serious assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of defense is that the defendant was actually in imminent danger of death or serious bodily injury, or that the defendant actually believed he was in imminent danger of death or serious bodily, bodily injury.

If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury, you should consider all the facts and

circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victims.

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. A defendant has the right to act on appearances even though the beliefs of the defendant may have been mistaken. It is for you to decide whether the fear of defendant of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance. If the defendant was on his own premises, the defendant had no duty to retreat before acting in self-defense.

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily injury. Therefore, in self-defense the defendant has the right to use the force necessary to avoid death or serious

bodily harm.

The force used in self-defense does not have to be limited to the degree or amount -- or amount of force used by the victim or victims. The defendant has a right to use so much force as appeared to be necessary for complete self-protection and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

If the defendant is justified in defending himself, then the defendant is also justified in continuing to defend until it is apparent that the danger of death or serious bodily injury has completely ended.

A person can be acting lawfully even if he is in unlawful possession of a weapon if he was entitled to arm himself in self-defense at the time of the shooting.

If the defendant or a member of defendant's household is attacked in the defendant's own home, the defendant may use the force which appears to be needed to protect himself or his household from death or serious bodily injury. If a trespasser refuses to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. If in the effort to eject the trespasser the life or safety of the defendant or member of the defendant's household is jeopardized, the defendant may take the life of the

trespasser. The kind and degree of force which are justified depend on the conduct of the trespasser. If a person entered the dwelling at the invitation of a member of the household, the person becomes a trespasser if the person refuses to leave when asked.

If while legitimately exercising in good faith the right to eject a trespasser the defendant is assaulted by the trespasser and fears death or serious bodily harm, the defendant would be entitled -- the defendant would be without fault in bringing on the difficulty. Whether the defendant was acting in good faith in attempting to eject the victim or victims and was assaulted in the process is a question for you to determine.

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the state for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent with a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind, so the

law says criminal intent may be inferred from the circumstances shown to have existed.

This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact, taking into consideration the acts of the parties and all of the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or failure to act. It may arise from negligence, recklessness, or an indifference to duty, or to consequences that is considered by the law to be the equivalent of criminal intent.

Now, while the arguments of counsel are a beneficial part of every trial, you should remember that the statements made by counsel are not evidence. In presenting their arguments, counsel often refer to the evidence. However, you should base your verdict on the evidence as you remember it. If there are any conflicts between the recollection of counsel about the evidence and your own recollection, you should rely on your own

understanding of the evidence.

Madame Forelady and members of the jury, I am required to charge you the law as I have done through these instructions now being given to help guide you to a just and lawful verdict. Whether some of these instructions apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects must not be considered as indicating an opinion of this court as to what you should find to be the facts or what your verdict should be.

Now, you've been chosen and sworn to give the parties a fair and impartial trial. When you have done so, you will have complied with your oath, and no one will have a right to criticize your verdict.

You must not be influenced by opinions or expression of opinions you may have heard outside of the courtroom but rather should base your verdict solely on the testimony of the sworn witnesses who took stand, the exhibits received into evidence, and the law which I have stated. You should not be swayed by caprice, passion, prejudice, or improper sympathy for or against anyone. Remember you have no friends to reward or enemies to punish, and all parties are entitled to a fair and impartial trial.

It is your duty as jurors to consult with one

another and to deliberate in an effort to reach an agreement. Each of you must decide this case for yourself but only after impartial consideration of all the evidence with your fellow jurors.

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

As I stated earlier, you are the judges, the judges of the facts, but your verdict must represent the considered judgment of each of you. In other words, your verdict must be unanimous.

Now, you may have noticed that I have read these instructions. I do so to give you the law as accurately as possible. I will give you a copy of these instructions to have in the jury room. You may refer to these instructions to assist you in your deliberations. You must consider the instructions as a whole and not -- and may not follow some and ignore others.

And, Madame Foreperson, it will be your duty to preside over the deliberations of the jury.

If during your deliberations you should desire to

communicate with the court, please reduce your message or question to writing sign by your foreperson and the foreperson only and pass the note to the bailiff, who will bring it to my attention. I will then respond as promptly as possible either in writing by having you return to the courtroom. I caution you, however, with regard to any message or question you might send that you should never state or specify your numerical division at the time.

Now you've heard the evidence and you have heard the law. Whatever your verdict, Madame Forelady, you will indicate the verdict on the back of each indictment. There are three indictments and on the back of each indictment, there's a place on the left side of the bottom, verdict. On each indictment, you write the verdict of guilty or not guilty and then sign and date the verdict.

Remember that although the foreperson is the only juror who writes the verdict, it is not hers alone. The verdict has to be unanimous.

Madame Foreperson, you are not authorized to write the verdict until all of you have agreed on the verdict.

Now, we have selected fourteen jurors, but we can only use twelve to deliberate, and we have two alternates on the back row. So, out of the first twelve

jurors selected, if any of you cannot continue with deliberations for whatever reason, for whatever reason under the sun, if any of you cannot continue and participate in deliberations, please let me know by raising your hand.

(THERE IS NO RESPONSE.)

THE COURT: All right, that means that each of the first twelve jurors are good to go, which means that the two alternates will remain with us when the others go to the jury room. Certainly we'll have them retrieve your lunch. Otherwise, you will remain with us while the others go to the jury room.

So, ladies and gentlemen, I will now send you to your jury room, but do not begin deliberations until you have received a copy of this jury charge, the indictments, and the exhibits. Once you receive these things, that will be your signal to begin your deliberations. Once you begin deliberations, you will deliberate until you have reached a verdict, at which time you will knock on the door, advise the bailiff, and we will bring you out to receive your verdict.

Yes, sir, come forward.

(WHEREUPON, A JUROR HAS A PRIVATE BENCH CONFERENCE WITH THE JUDGE.)

THE COURT: Counsel approach.

(THE FOLLOWING BENCH CONFERENCE IS IN WITH THE PRESENCE OF COUNSEL.)

THE COURT: Mr. Bowen, I will use you as a clerk. Mr. Bowen, I'm going to use you as a clerk.

BAILIFF: All right.

THE COURT: Ladies and gentlemen, we're going to select one of the alternates to serve and participate in deliberations, Juror number 41 or 297. Are those your numbers? On the back row, 297 and 41? All right.

So in selecting an alternate, the process is you put the numbers of the alternates in a box and randomly select one. We've put their numbers in a box, the two numbers.

We've done that, Mr. Bowen. Mr. Bowen, we've put them in a box already.

Any objection to Mr. Bowen serving the role as the selector?

MS. YOUNG: No, Your Honor.

THE COURT: All right. All right, if you'll pick one out.

(A PAUSE.)

THE COURT: All right. So, Juror number 297, you will become -- if you'll change seats with the gentleman ahead of you.

(A PAUSE.)

THE COURT: So, you, you become a regular member the jury panel and will participate in the deliberation. Certainly you have been here and listened to all the evidence, and you are now a member of the regular panel.

So as the parties go, the remaining two jurors will stay with us. If you all will go now to the jury room and wait for the exhibits and indictments before beginning deliberations, and certainly we have your lunch back there, and how you manage that is totally up to you all, but you will deliberate until you reach a verdict.

(THE JURY EXITS AT 1:13 PM.)

THE COURT: Are there any additions or exceptions to the charge?

MR. SCOTT: None from the state, Your Honor.

MR. LUKE SHEALEY: There is one from the defense, Your Honor, regarding the defense of habitation charge. I was listening very carefully. I know this is kind of more of a last-minute one, but it did omit -- was a very critical part of that was that unlike defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Rather, defense of habitation provides when one attempts to force himself into a

dwelling, the law permits an owner to use reasonable force to expel the trespasser. I did hear the language about invitees being transformed into trespasser and what it means, but I did not hear that critical distinction about not requiring an attack or imminent threat. So, I just -- to be complete, I think it would be that, Your Honor.

THE COURT: The court is satisfied that the instruction was the proper instruction, and you can make your additional request part of the record.

MR. LUKE SHEALEY: Thank you, Your Honor.

THE COURT: Anything else?

MR. SCOTT: Not from the state.

THE COURT: All right, the exhibits, are they together?

COURT REPORTER: Yes, sir.

THE COURT: Together already?

COURT REPORTER: Yes, sir.

THE COURT: Okay. Well, you can make this note a part of the record, and jurors can begin deliberating.

(JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 2 RECEIVED INTO EVIDENCE.)

(WHEREUPON, JURY DELIBERATIONS BEGIN AT 1:18 PM.)

THE COURT: All right let's come to order. Come to order. Court is still in session.

Sir, you guys can go.

I want to thank you all for your service on the case. The one juror -- sir, I'm talking to you primarily, the two of you. They will get your things out of the jury room.

JUROR: You want us to leave?

THE COURT: Pardon?

JUROR: Did you say to leave?

THE COURT: No. I'm talking to you all. You can't leave while I'm talking to you. I'm thanking you for your jury service, and now you're released from jury duty. You can discuss the case with anyone that you might want to, but it's advisable to not disclose what you think the verdict should be or should have been until you hear a verdict from the jury. Other than that, you are now released from jury service. They will get whatever you have put in the jury room. They'll bring it out for you, including your lunch and any personal items and give you your cell phones and all that. I want to thank you on behalf of the state and defendant and the citizens of this county. So, thank you all.

And we will be at ease.

(OFF THE RECORD.)

THE COURT: I understand that the jury has a

verdict. I want to remind everyone that the decorum of the court must be maintained at all times. No outbursts allowed.

You can bring the jury.

(THE JURY ENTERS AT 4:14 PM.)

THE COURT: Madame Forelady, if you will stand for me. Have you reached a verdict?

FOREPERSON: We have.

THE COURT: Is it unanimous?

FOREPERSON: It is.

THE COURT: All right. If you will pass it up, and you may be seated.

The defendant will rise.

(A PAUSE.)

THE COURT: All right, Madame Clerk, you may publish the verdict.

VERDICT

CLERK OF COURT: Indictment number 2021-GS-40-1294, *The State v. Antonio Vashon Barnes, Jr.* This is an indictment for possession of a weapon during, during a violent crime. We, the jury, find the defendant guilty. It's signed foreperson, Juror number 156, December 8, 2022.

Indictment number 2021-GS-40-1292, *The State v. Antonio Vashon Barnes, Jr.* This is an indictment for

murder.

THE COURT: Of?

CLERK OF COURT: Murder of Eric Griffin. We, the jury, find the defendant guilty. This is signed foreperson, Juror number 156, December 8, 2022.

Indictment number 2021-GS-40-1293, *The State of South Carolina v. Antonio Vashon Barnes, Jr.* This is an indictment for the murder of Antonio Dash. We, the jury, find the defendant not guilty. This is signed by foreperson, Juror number 156 December 8, 2022.

Madame Foreperson, are these your verdicts and the verdicts of the entire jury?

FOREPERSON: They are.

THE COURT: Thank you.

Any individual polling requested?

MR. LUKE SHEALEY: Yes, Your Honor.

THE COURT: If you will poll the jurors individually, please.

CLERK OF COURT: Yes, Your Honor.

JURY POLLING

CLERK OF COURT: Ladies and gentlemen of the jury, I'm going to ask you two questions regarding each verdict, and if you will answer yes or no to these questions.

Juror number 156.

THE COURT: Thank you.

Anything else by the state? Mr. Walton?

MR. WALTON: I concur with Mr. Scott, Mr. Gilliam. What happened is heinous, and just leave it in Your Honor's discretion. You know the facts, and we trust in your judgment.

THE COURT: Mr. Fowler.

MR. FOWLER: Your Honor, I would just concur with the wishes of the family that suffered the most in all of this.

THE COURT: Anything else, Mr. Scott?

MR. SCOTT: Nothing else, Your Honor.

THE COURT: Mr. Barnes, if you will come around here for sentencing.

(A PAUSE.)

THE COURT: Anything you'd like to say, Mr. Barnes?

DEFENDANT: No, sir.

THE COURT: Mr. Barnes, you, you engage in a very high risk lifestyle where you said you were selling marijuana to support your habit. Had a lot of marijuana in your house. You had a lot of guns in your house, and when you say that you were sound asleep and were -- I imagine you slept with one eyes -- one eye open based on your lifestyle.

I see nothing in this case but just a totally

senseless killing. My evaluation of the case, listening to the testimony, is not the same as your lawyers. I don't see anything that was unique about this case. For you to jump up with a loaded gun and just at 9 o'clock in the morning, at 8:46 in the morning, 8:51, whatever it was and just start blindly firing your gun, knowing that you had roommates, without even attempting to ascertain any significant degree of danger. I imagine that had to have been the quietest tussle that ever existed for you to be in one room in an apartment when someone else is creating this thunderous, dangerous noise that you think is somebody breaking in without them otherwise making a sound.

And the jury did wrestle with this case, and I would think that they wrestled with the fact that neither side wanted the jury to be instructed on manslaughter. The jury had to find malice in order to find you guilty of killing Mr. Dash, and they could not find that beyond a reasonable doubt. You indicated how you loved him like a brother and how sorry you were after the shooting, and you rolled the dice on both charges. Did not want an instructions on manslaughter and maybe you -- you roll the dice and won on that one.

But you at no time expressed any regard for the life of Mr. Griffin during the police interrogation,

during your testimony, and most importantly during the time you put that gun to his head at close range and basically blew his brains out. As much malice as one can ever imagine at the time that you killed him. So, I, I don't buy the notion that this was a tragic misunderstanding.

You, during your testimony, talked about playing the video games and you approached this situation, it appeared, as if it was a video game where you could fire all these shoots as if it were a video game. Then at the end of it, they all would get up and just walk around as if you hadn't pulled the trigger.

So, there's nothing unique about that these days. You know, I see it all the time consistently by people your age, just a total reckless regard -- disregard for human life, reckless use of guns, reckless shooting, reckless killing, and yours just happened to be just one more. Two more in this instance. Three more including you, and it's just so sad.

I'm impressed by one thing in this trial, and that is your level of intelligence. The way you were be able to confront and face the cross-examination by the solicitor, you, you could match him word for word, thought for thought. You know, you, you displayed such a high level of intelligence, and that's why I could see

how your lawyers would be so impressed with you and maybe with your version of things because you're an extremely intelligent person. And for you to engage in the lifestyle you did and to commit the crime that you did, such a -- such a tragedy for you, in addition to a tragedy for everyone else, including all of the victims.

SENTENCE OF THE COURT

THE COURT: So, you've been convicted of murder, carrying thirty years to life. You've been convicted of possession of a weapon during the commission of a violent crime, which carries five years. I imagine you see Mr. Dash and Mr. Griffin for most days during your -- during your life from henceforth, if not from then til now.

On murder, the sentence is thirty-five years. The weapon charge, the sentence is five years to run concurrent with credit for any time that you are due. I hope you make the best of your time, the best of your life. Good luck to you.

MR. LUKE SHEALEY: Your Honor, I'd requested ten days for posttrial motions. Can we clarify that deadline? By my count, that would be the 22nd.

THE COURT: I haven't been counting. So, you can count to ten, whatever that is.

MS. YOUNG: Should that include weekends?



Type	Time stamp (New York)	Details	Content
iMessage	2/5/2019 18:03	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:03:51 PM (UTC-5) Delivered: 02/05/2019 06:03:52 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Tell me y sumbody stole 1 of our guns today
iMessage	2/5/2019 18:03	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:03:53 PM (UTC-5) Delivered: 02/05/2019 06:03:56 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Idk who doe
iMessage	2/5/2019 18:04	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/05/2019 06:04:09 PM (UTC-5) Read: 02/05/2019 06:08:37 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: How that happen

iMessage	2/5/2019 18:08	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:08:38 PM (UTC-5) Delivered: 02/05/2019 06:08:41 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Idek
iMessage	2/5/2019 18:14	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/05/2019 06:14:35 PM (UTC-5) Read: 02/05/2019 06:58:08 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Y'all be having to many ppl in there chillin and shit.
iMessage	2/6/2019 12:24	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 12:24:27 PM (UTC-5) Delivered: 02/06/2019 12:24:28 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Still tryna figure out who took dha gun

iMessage	2/6/2019 12:54	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 12:54:05 PM (UTC-5) Read: 02/06/2019 01:21:55 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: I thought y'all fighter that out last night
iMessage	2/6/2019 13:22	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:22:03 PM (UTC-5) Delivered: 02/06/2019 01:22:30 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Naw we never did
iMessage	2/6/2019 13:22	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:22:06 PM (UTC-5) Delivered: 02/06/2019 01:22:30 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Shit crazy

iMessage	2/6/2019 13:26	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:26:36 PM (UTC-5) Read: 02/06/2019 01:38:27 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Where was it at
iMessage	2/6/2019 13:38	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:38:57 PM (UTC-5) Delivered: 02/06/2019 01:38:59 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: On dha lul table in dha corner Nd shit so crazy is we was all in dha same plac
iMessage	2/6/2019 13:39	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:39:07 PM (UTC-5) Delivered: 02/06/2019 01:39:08 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Like right in front our face type shit

iMessage	2/6/2019 13:41	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:41:05 PM (UTC-5) Read: 02/06/2019 01:41:28 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Y'all asses must been playing the game and not paying attention
iMessage	2/6/2019 13:41	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:41:22 PM (UTC-5) Read: 02/06/2019 01:41:28 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: You think it was somebody you be serving to ?
iMessage	2/6/2019 13:42	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:42:08 PM (UTC-5) Delivered: 02/06/2019 01:42:09 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: It had to be one of our supposed to be friends idk it wasn't my gun but still how

iMessage	2/6/2019 13:46	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:46:19 PM (UTC-5) Read: 02/06/2019 02:08:23 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Smh ▩♀
iMessage	2/6/2019 14:09	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 02:09:43 PM (UTC-5) Delivered: 02/06/2019 02:09:44 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Ikr juss gotta keep Mfs from Round
iMessage	2/6/2019 14:28	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 02:28:44 PM (UTC-5) Read: 02/06/2019 02:29:16 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: That's so true

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **)** **Antonio Vashon Barnes, Jr.)** **Defendant.)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2019A4021600441, 2019A4021600442, 2019A4021600444** **DEFENDANT'S REQUEST TO CHARGE # 8**

Defense of Habitation

The defense of habitation is the defense of one's dwelling house. Our common law has long recognized the defense of habitation as analogous, yet distinct to self-defense, and that for the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser. For defense of habitation to apply it is also not necessary to show that the trespasser entered by force:

> A man who attempts to force himself into another's dwelling, or who, ***being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.***

State v. Bradley, 126 S.C. 528 (1923).

[Signature page to follow]

_____
Laura Young
Attorney for the Defense

_____
Brian R. Shealey
Attorney for the Defense

_____
Luke A. Shealey
Attorney for the Defense

December ___, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2019A4021600441, 2019A4021600442, 2019A4021600444**
The State of South Carolina,	
vs.	**MOTION TO EXCLUDE PHOTOS OF GUNS AND EVIDENCE OF DRUG USE AND/OR DEALING**
Antonio Vashon Barnes, Jr. Defendant.	

RICHLAND COUNTY
FILED
2022 DEC -5 AM 8:56
JEANETTE W. McBRIDE
C.C.P., G.S., & Q.S.

The above-captioned defendant, Antonio Vashon Barnes, Jr. ("Barnes"), by and through his attorneys, Luke and Brian Shealey, Laura Young and Caroline Latimer, hereby moves this Honorable Court for an Order excluding prejudicial evidence of marijuana and guns. Pursuant to Rules of the South Carolina Rules of Evidence, Defendant requests that the Court prohibit a picture of Barnes' holding a gun and any evidence of marijuana possession or dealing as irrelevant, more prejudicial than probative and improper character evidence.

FACTS

The morning of February 7, 2019, Barnes was asleep in his bed, which is substantiated by the lack of activity on Barnes' phone that morning, when he heard a loud commotion coming from his living room. Barnes believed that both of his roommates would not be in the apartment that morning because one roommate, Antonio Dash ("Dash"), was supposed to go to work and the other roommate, Samuel Thomas ("Thomas"), was supposed to go to a doctor's appointment. Barnes further believed that the large commotion was due to unknown individuals attempting to rob his apartment. Believing that his apartment was being robbed, Barnes grabbed a gun from his room, entered the short narrow hallway of the apartment which led into the apartment's living room and shot towards the loud commotion. Barnes shortly discovered that the individuals making

the loud commotion were Dash and an acquittance, Eric Griffin ("Griffin"). Both Griffin and Dash suffered from gunshot wounds and died as a result of those gunshot wounds. Evidence of a fight or commotion is present in the apartment where a table is turned over, a hole is in the wall and one of the decedents potentially had an earring ripped out of their ear. The gun that Barnes possessed at the time of the shooting was recovered by law enforcement.

On March 30 and 31, 2022, a hearing was held before the Honorable DeAndrea Gist Benjamin pursuant to Barnes' motion asserting statutory immunity from prosecution ("Immunity Hearing"), pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq).* At the Immunity Hearing, the State presented a photo of Barnes with a gun and photos of guns. The State also presented evidence of a gun going missing a few days before the shooting. The missing gun was Antonio Dash's ("Dash"), one of the roommates and decedents, gun. Around the time the gun allegedly went missing, on or about February 4, 2019, Dash, Barnes, Thomas, Griffin and another individual were present at Dash's, Barnes' and Thomas' apartment. Additionally, over the Defenses' objection, evidence of marijuana dealing and marijuana being found in the apartment were presented where Barnes, in an interview after the shooting, admitted to dealing marijuana.

DISCUSSION

I. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are Irrelevant

Irrelevant evidence is to be excluded. SCRE, Rule 402. Evidence is relevant if it has the tendency to make a fact of consequence more or less probable. SCRE, Rule 401.

Evidence of Barnes holding a gun prior to the shooting, being around a gun prior to the shooting or possessing a gun prior to the shooting is irrelevant to any fact in issue where Barnes

admits to possessing a gun at the time of the shooting and said gun was recovered by law enforcement.

Additionally, evidence of any marijuana dealing by Barnes is not relevant where there is no evidence, circumstantial or direct, that Barnes was attempting to sell marijuana that morning. Evidence of prior marijuana dealing or possession is not relevant to any fact at issue in this case where circumstantial evidence supports Barnes' consistent account to law enforcement and witnesses that he was asleep prior to hearing the commotion in the living room. Therefore, any evidence of prior marijuana dealing or possession should be properly excluded.

II. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are More Prejudicial Than Probative

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403, SCRE. "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Photos of Barnes holding a gun would present unfair prejudice because it would lead the jury to rely on their emotional dislike for Barnes to be holding a gun, possessing a gun or being around a gun. The imagery of Barnes being around copious amounts of guns, even though there is no substantial evidence to support that assertion, would incite the emotions of the jury where Barnes is alleged to have shot Dash and Griffin and has admitted to shooting Dash and Griffin. This imagery the evidence would create outweighs any probative value of the images where Barnes admits to possessing a gun and using a gun on the day of the perceived robbery and shooting.

Evidence of Barnes prior marijuana dealing and/or possession would be more prejudicial because it would incite strong emotions in the jury surrounding drug use, possession and dealing.

This prejudicial effect would outweigh any probative effect, if any exists. As previously argued, marijuana use and dealing is irrelevant to any facts at issue in this case therefore there is no probative value of such evidence. Furthermore, such evidence does not possess any probative value where Barnes asserts that he was asleep at the time of the commotion and did not have knowledge of who the individuals in the living room were. Subsequently, evidence of prior marijuana dealing or possession should properly be excluded as more prejudicial than probative.

III. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are Improper Character Evidence

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE.

The presentation of Barnes holding a gun and possession of pictures of guns will only be presented as improper character evidence because, being devoid of any real probative value or relevance in this case as argued above, the images will be presented to show the jury that Barnes may have possessed or been around guns or possessed pictures of guns and therefore he possessed a gun the morning of February 7, 2019, which is not in dispute, and used that gun with some malicious intent, which is in dispute where Barnes states he believed his apartment was being robbed and had no idea of the identity of the individuals fighting in the apartment living room. Evidence that Barnes had previously been near a gun or possessed a photo of a gun is not circumstantial evidence of malicious intent other than to say because Barnes had been near guns or possessed photos of guns he is a bad guy who possessed a gun with a malicious intent on the morning of February 7, 2019.

Similarly, any evidence that Barnes may have previously sold marijuana or possessed marijuana has no probative value or relevance to Barnes motive, intent or mistake of fact on February 7, 2019, where forensic evidence of Barnes' cell phone is circumstantial evidence supporting Barnes' account of being asleep that morning and being unaware of Griffin and Dash in the living room. The introduction of such evidence would be presented to suggest that because Barnes was previously engaged in criminal activity he was engaged in criminal activity on the morning of February 7, 2019 and had malicious intentions. Therefore, evidence of prior marijuana dealing and/or possession should be properly excluded.

CONCLUSION

The admission of photos of Barnes holding a gun and pictures of guns as well as evidence of marijuana dealing and/or consumption should be excluded as inadmissible irrelevant evidence, more prejudicial than probative evidence and improper character evidence.

[Signature page to follow]

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Columbia, South Carolina
This 5th Day December, 2022

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2019A4021600441, 2019A4021600442, 2019A4021600444**
The State of South Carolina,)	
vs.)	**MOTION TO EXCLUDE RAP LYRICS**
Antonio Vashon Barnes, Jr.) **Defendant.)**	

RICHLAND COUNTY
FILED
2022 DEC -5 AM 9:11
JEANETTE W. McBRIDE
C.P., G.S., & C.C.

The above-captioned defendant, Antonio Vashon Barnes, Jr. ("Barnes"), by and through his attorneys, Luke and Brian Shealey, Laura Young and Caroline Latimer, hereby moves this Honorable Court for an Order excluding the introduction of a rap video downloaded to Barnes' phone on or about January 18, 2019 into evidence because of the State's inability to authenticate the video, the video's lack of relevance, the prejudicial effect of the protected speech outweighing its probative value, and the video's presentation of improper character evidence.

FACTS

On March 30 and 31, 2022, a hearing was held before the Honorable DeAndrea Gist Benjamin pursuant to Barnes' motion asserting statutory immunity from prosecution ("Immunity Hearing"), pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq).* At the Immunity Hearing, the State elicited testimony from the Defense's cell phone forensics expert, Christopher Watkins ("Watkins"), who analyzed Barnes' cell phone about text messages sent and received February 6, 2019, about a missing gun, and about a rap video downloaded from Barnes' Instagram account on January 18, 2019, which was excluded from evidence. Watkins testified at the Immunity Hearing that the video was downloaded from Instagram and therefore,

originated from another device. Watkins further testified that, "any media content that's indicated by Instagram will be stripped of its original meta data so I cannot see the exact date and time it was created." Immunity Hearing Transcript, Pg 274, lines 24-25 & pg 275, lines 1-2. All Watkins was able to testify to was the time the video was downloaded, not the time the video was created or received. The rap video generally references killing an individual that attempts to steal. The text messages about the missing gun discussed a gun belonging to Dash that Dash had not seen since on or about February 4, 2019. No other evidence of Barnes being the victim of a theft was presented.

DISCUSSION

I. The Admission of the Rap Video is Barred by Basic Rules of Evidence Principles

Many courts, including South Carolina's Supreme Court[1], have come to realize the inequity with which Rap lyrics, a protected form of speech, are being presented in criminal cases in violation of basic Rules of Evidence prohibiting irrelevant evidence, evidence that is more prejudicial than prohibitive and improper character evidence[2].

---

[1] *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001) (prohibiting a song lyric referencing leaving no prints and bodies left in a pool of blood written by the defendant as more prejudicial than prohibitive).

[2] *United States v. Stephenson*, 550 F. Supp. 3d 1246 (M.D. Fla. 2021) (excluding videos of raps about past drug dealings, trafficking in narcotics and possessing a firearm as more prejudicial than prohibitive where the defendant was facing drug and firearm charges); *United States v. Johnson*, 469 F. Supp. 3d 193 (S.D.N.Y. 2019) (excluding lyrics from a rap video presented by the State to show gang affiliation as unfairly prejudicial); *People v. Coneal*, 254 Cal. Rptr. 3d 653 (2019) (excluding rap videos because the videos were cumulative of other, less prejudicial evidence, and their probative value depended on construing the lyrics as literal statements of fact or intent commenting that "[a]bsent some meaningful method to determine which lyrics represent real versus made up events, or some persuasive basis to construe specific lyrics literally, the probative value of lyrics as evidence of their truth is minimal"); *DeHart v. State*, 87 N.E.3d 54 (Ind. Ct. App. 2017) (finding that the admission of rap lyrics for three songs was an abuse of discretion where the song was recorded three years before the events at issue in the prosecution and did not reference the victim nor reference the particular facts of the crime); *United States v. Felix*, 663 F. App'x 557 (9th Cir. 2016) (excluding rap videos on the grounds that the rap lyrics are not admissible as party admissions, are not inextricably intertwined with charged crimes, are not evidence of other acts relevant to establish motive or knowledge, and danger of unfair prejudicial effect substantially outweighs any probative value); *State v. Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014) (holding that "[c]onsidering the content of these lyrics...there is no question that Evidence Rule 404(b)'s purpose was implicated. It is an understatement to say that...a jury could infer that the author of these rap lyrics, defendant, was a bad person who not only believed in addressing people who crossed him by killing them but also had done that in the past as he so vividly describes in his lyrics..."); *Hannah v. State*, 420 Md. 339, 23 A.3d 192 (2011) (excluding rap lyrics as "inadmissible works of fiction").

a. The State Cannot Properly Authenticate the Rap Video

Rule 901 of the South Carolina Rules of Evidence provides that, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Proper foundation establishing the authenticity of a piece of evidence is required prior to a determination of admissibility. *See State v. Rich*, 293 S.C. 172, 359 S.E.2d 281 (1987).

A cell phone forensic analyst has testified that due to the platform from which the rap video was downloaded the creation date of the rap video cannot be established. The only evidence of the creation date is the download date which was in January of 2019. Without additional supporting evidence, it is impossible to establish whether the video was created weeks, months, or years prior to January of 2019. Therefore, the authenticity, a precedent to determining its' relevance, probative and prejudicial value, of the rap video cannot be established without supporting evidence of its creation date. The rap video should properly be excluded for lack of evidence of authenticity.

b. The Rap Video is Irrelevant to the Shooting for Which Barnes is Charged

Irrelevant evidence is to be excluded. SCRE, Rule 402. Evidence is relevant if it has the tendency to make a fact of consequence more or less probable. SCRE, Rule 401.

"'Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence...of the intent to commit the crime when intent or state of mind is in issue." (quoting, Danny R. Collins, South Carolina Evidence 319 (2d ed. 2000)). "State of mind is an issue any time malice or willfulness is an element of the crime." *Id.* at 124-125. Malice is an element of murder. S.C. Code Ann. § 16-3-10.

The Defense anticipates that the State intends to introduce the rap video into evidence as circumstantial evidence of motive. While the exact date of creation is unable to be established, the rap video was created prior to Dash's gun allegedly going missing and any conversations about Dash's gun allegedly going missing where the gun allegedly went missing on or about February 4, 2019. Therefore, the rap is not relevant to motive or intent because the alleged theft of the gun had not yet occurred and a vague reference to violence is not admissible. *See Cheeseboro*, S.C. 526, S.E.2d 300. The rap video should properly be excluded as irrelevant evidence.

c. The Rap Video is More Prejudicial Than Probative

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403, SCRE. In *State v. Cheeseboro*, the South Carolina Supreme court considered whether the following rap lyrics were properly admitted by the trial court:

> Ruckus, I believe you're a perpetrator, gold and platinum hater, cause me and J.D. is a force like Dark Vador. Who do you despise a strong enterprise? Do the greed in your eyes lead you to tell lies? Victimize me and Jermain Dupri, don't let me see or else there'll be death in this industry. Want let go, set it fo'sho', I get hype like Mike put yo' blood on the dance flo'. Blow fo' blow, toe to toe, with that no mo'. Like the 4th of July, I spray fire in the sky. If I hear your voice, better run like horses or like metamorphis, turn all y'all to corpses. No fingerprints or evidence at your residence. Fools leave clues, all I leave is a blood pool. Ten murder cases, why the sad faces? Cause when I skipped town, I left a trail [of] bodies on the ground. Your whole click ain't nothing but tricks, bitch pulling sticks, grown men sucking dicks. No one bring ruckus like King Justice, but toughest the So So Def most corruptest.

S.C. 549-550 (). The trial court admitted the rap lyrics as an admission against interest due to their reference to leaving no prints and bodies left in a pool of blood where the defendant was being accused of an armed robbery and the murder of three individuals in an execution style shooting. The South Carolina Supreme Court found the admission to be in error because the prejudicial value of the rap lyrics far outweighed its probative value.

Much like *Cheeseboro*, the rap lyrics in this case are vague in context and much like *Cheeseboro*, "[t]he minimal probative value...is far outweighed by its unfair prejudicial impact as evidence of...bad character, *i.e.* his propensity for violence..." *Cheeseboro*, S.C. 550. Additionally, much like *Skinner*, there is no question that the prejudicial effect of these lyrics referencing theft well before any allegations of theft had occurred and a general claim of violence, normally used in rap lyrics as a metaphor for bravado, far outweighs any probative value, if any in fact exists. *Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014). The rap video should properly be excluded as more prejudicial than probative.

d. The Rap Video Would be Improper Character Evidence

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE.

It is indisputable that rap videos have been presented in criminal trials as evidence of connections to gangs, drugs, violence, etc. without any legitimate reason other than as 'bad guy' evidence[3]. In this case, there is no legitimate connection to any motive, identity, the existence of a common scheme or plan, an absence of mistake or accident or intent where the rap was created prior to any alleged theft, the alleged theft was not of Barnes' gun, one of the victims of the alleged theft is a decedent, and the reference to theft and violence is vague and does not identify the decedents. Much like the rap lyrics in *Skinner*, "[i]t is an understatement to say that...a jury could infer that the author of these rap lyrics, defendant, was a bad person who not only believed in

[3] *United States v. Stephenson*, 550 F. Supp. 3d 1246 (M.D. Fla. 2021); *United States v. Johnson*, 469 F. Supp. 3d 193 (S.D.N.Y. 2019); *People v. Coneal*, 254 Cal. Rptr. 3d 653 (2019); *DeHart v. State*, 87 N.E.3d 54 (Ind. Ct. App. 2017); *United States v. Felix*, 663 F. App'x 557 (9th Cir. 2016); *State v. Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014); *Hannah v. State*, 420 Md. 339, 23 A.3d 192 (2011).

addressing people who cross him by killing them..." 218 N.J. 496, 95 A.3d 236 (N.J. 2014). The rap video and the lyric it contains is merely being presented as evidence that because Barnes rapped a general lyric about theft and violence, before ever personally experiencing theft, he intentionally shot Dash and Griffin because of an alleged theft of one of the decedent's gun. The rap should properly be excluded as improper character evidence where no circumstantial evidence supports an assertion that the rap is evidence of motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

II. Use of the Rap Video Will Violate Barnes' First Amendment Right to Free Expression

Rap music is an artistic expression protected under the First Amendment. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) ("Music, as a form of expression and communication, is protected under the First Amendment."). Rap music, like other forms of art, has its own "artistic or poetic conventions." Andrea Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life and Criminal Evidence*, 31 Colum. J.L. & Arts 1, 20 (2007). Like other fiction authors, rap artists use "constructed images, metaphor, braggadocio, or exaggerated storylines" meant to "stretch and shatter credibility" where "[h]omocide serves as a frequent metaphor." *Id.* at 22-23, 25. Rap artists will "adopt mythical or real-life characters as alter egos or fictional personas," becoming a "thug, gangster...and hustler" when they rap. *Id.* at 23. Therefore, rap lyrics "may falsely or inaccurately depict the occurrence of events," and are not necessarily autobiographical statements. *Id.* at 24.

Importantly, the South Carolina Supreme Court ruled in *Cheeseboro* the admission of rap lyrics making a vague reference to violence, leaving no prints and bodies left in a pool of blood, where the appellant was charged with armed robbery and execution-style shooting of three

victims was more prejudicial than prohibitive considering the commonly violent nature of rap lyrics. *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001). Similarly, the rap lyrics at issue in this case, which inception was before any alleged theft of Dash's gun, merely contains a vague reference to theft and homicide, a common metaphor in rap lyrics. The use of the rap video would violate Barnes' First Amendment right to free speech where the rap lyrics have no barring on Barnes' state of mind at the time of the shooting and would further have a chilling effect on an entire genre of music.

CONCLUSION

The admission of the rap video would violate Barnes' First Amendment right to expression and should further be excluded for the State's inability to authenticate the video and as inadmissible irrelevant evidence, more prejudicial than probative evidence and improper character evidence.

[Signature page to follow]

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Columbia, South Carolina
This 5th Day December, 2022

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** **The State of South Carolina,** **vs.** **Antonio Vashon Barnes, Jr.** **Defendant.**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2019A4021600441, 2019A4021600442, 2019A4021600444** **MEMORANDUM OF LAW SUPPORTING ADMISSION OF CERTAIN EVIDENCE AND CERTAIN LINES OF EXAMINATION**

RICHLAND COUNTY
FILED
2022 DEC -5 AM 8:
JEANETTE W. WALTERS
C.C.P., G.S.,

Comes now, the Defendant, by and through his undersigned attorney, providing the Court and opposing counsel a memorandum of law in support of the admission of certain evidence and the relevancy of certain lines of examination. Defense counsel has prepared this memorandum in anticipation of possible objections by the State regarding certain evidence and lines of examination.

Anticipating possible objections from the State, the Defendant provides the Court with this memorandum of law in support of his right to present and utilize certain evidence in presenting a full and complete defense.

ARGUMENT

I. THE DEFENDANT HAS CONSTITUTIONALLY PROTECTED RIGHTS UNDER THE 5th, 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §3 AND §14 OF THE CONSTITUTION OF SOUTH CAROLINA TO CONFRONT WITNESSES UNDER OATH AND TO HAVE A MEANINGFUL OPPORTUNITY TO PRESENT A FULL AND COMPLETE DEFENSE.

The Defendant has a constitutionally protected "right to present a defense," a right enumerated via the 6th Amendment to the Constitution of the United States and recognized by the Supreme Court of the United States in Washington v. Texas, 388 U.S. 14 (1967).

In *Washington*, the Supreme Court recognized that the compulsory process clause was designed to secure more than the presence of the defendant's witnesses:

> The right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present the defense, **the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.** Washington at 19, emphasis added.

In reversing a South Carolina conviction based on the right to present a defense, the United States Supreme Court stated that "the Constitution guarantees criminal defendants 'a meaningful opportunity to present **a complete defense.**'" Holmes v. South Carolina, 547 U.S. 319, 331 (2006), emphasis added. In quoting that language, the *Holmes* court cited to previous decisions. The full quote is actually:

> Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683, 689 (1986), quoting California v. Trombetta, 476 U.S. 479, 485 (1984).

This concept is also firmly rooted in the Constitution of South Carolina. In a section titled "Trial by Jury; Witnesses; Defense," our State constitution reads:

> The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, **and to be fully heard in his defense by himself or by his counsel or by both.** Art. I, Sec. 14 S.C. Constitution, (emphasis added).

The Supreme Court of South Carolina has embraced the "right to present a defense," specifically quoting the language from *Washington* cited above and further citing *Washington* in stating that, "This right is a fundamental element of due process of law." State v. Inman, 395 S.C. 539, 561 (2011), quoting Washington at 19. This right gains special importance when the evidence is critical of the accused's defense and, as argued below, state courts may not impinge a defendant's fundamental constitutional rights by relying on state evidentiary or court rules. Pettijohn v. Hall, 599 F.2d 476 (1st Cir. 1979), citing Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

Furthermore, once a sixth amendment right is implicated, the state must offer a sufficiently compelling purpose to justify the practice. Various state evidentiary rules which advanced legitimate state interests have bowed to the defendant's right to let the jury hear relevant evidence. See, *e.g.*, Washington v. Texas, *supra*, (state interest in avoiding perjured

testimony did not justify its ruling barring co-conspirators from testifying); Chambers v. Mississippi, *supra*, (state law excluding third party hearsay confessions did not justify exclusion). Cf. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974) (confrontation right prevails over juvenile proceedings privilege statute); United States v. Nixon, 418 U.S. 683, 709; 94 S.Ct. 3090 (1974) (executive privilege yields to need for criminal evidence). Any reason offered for exclusions in this case would be likewise insufficient.

II. THE EVIDENCE AND EXAMINATION SOUGHT IS RELEVANT AND ADMISSIBILE.

For evidence to be admissible, there must be a logical or rational connection between the fact sought to be presented and a matter of fact in issue at trial. Gause v. Livingston, 251 S.C. 8, 159 S.E.2d 604 (1968). Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012), citing SCRE 401. Any evidence that assists the court in getting at the truth of an issue will be deemed relevant and admissible unless the evidence is incompetent because of some legal rule. Toole v. Salter, 249 S.C. 354, 154 S.E.2d 434 (1967).

In *Kyles v. Whitley*, the United States Supreme Court reversed a murder conviction and death sentence based on the prosecution's failure to disclose material evidence favorable to the accused. In doing so, the *Kyles* court devoted an entire section of their opinion (section IV, B) to the defense of attacking "the thoroughness and even the good faith of the investigation." Kyles v. Whitley, 514 U.S. 419, 445 (1995).

> A common trial tactic of defense lawyers is **to discredit the caliber of the investigation or the decision to charge the defendant**, and we may consider such use in assessing a possible *Brady* violation. Kyles at 446, quoting Bowen v. Maynard, 799 F.2d 593, 613 (CA10 1986), emphasis added.

Kyles makes clear that attacking the investigation and decision to charge the accused is a valid defense. Evidence and examination that speaks to those defenses are wholly relevant and admissible.

Additionally, the South Carolina Rules of Evidence specifically afford the Defendants the right to present evidence of bias, prejudice or motive in examining and impeaching witnesses. **This evidence can be provided by examination or by evidence otherwise adduced**. SCRE 608(c), emphasis added. "Anything having a legitimate tendency to throw light on the accuracy,

truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony. **On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness.**" State v. Saltz, 346 S.C. 114, 131-132; 551 S.E.2d 240, 250 (2011), emphasis added.

All of the authority cited above makes clear that the Defendant is entitled to present this evidence in his defense. The Court cannot restrict the Defendant's constitutionally protected right to present material and relevant evidence to a jury that goes to directly undermining the credibility of the State's investigation and decisions to charge.

Even if the Court were to find an evidentiary reason to exclude such evidence and examination, the Defendant would be entitled to an *Offer of Proof* under Rule 103(a)(2) SCRE in order to protect the record for appeal. In fact, failure to make an offer of proof would preclude consideration of the matter on appeal. Carson v. SCDNR, 371 S.C. 144, 638 S.E.2d 45 2002).

CONCLUSION

It is clear from the facts and law set out in this memorandum that the Defendant has protected rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and Article I and Article V of the Constitution of South Carolina to confront witnesses against her and to present a full and complete defense. The evidence and testimony sought would be material and relevant to the Defendant's defense and would assist the finder of fact in getting at the truth of this contested criminal matter.

As such, the Constitutions of both the United States and South Carolina, as well as case law and the rules of evidence demand that the Court allow this evidence and examination.

Respectfully submitted,

(Signature page to follow)

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2019A4021600442, 2021GS4001294; 2019A4021600444, 2021GS4001292

The State of South Carolina

vs.

Antonio Barnes,
Defendant.

MOTION FOR A NEW TRIAL

RICHLAND COUNTY
FILED
2022 DEC 22 PM 4:14
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

On December 8, 2022 Antonio Barnes was found guilty at trial on one charge of murder (Eric Griffin) and one charge of possession of a weapon during a violent crime. He was found not guilty on the remaining charge of murder (Antonio Dash). He was sentenced to thirty-five years in prison on December 13, 2022. At this time, the defense renews all previous motions and objections and respectfully requests that a new trial be granted in this case. The denial of the following motions prevented Mr. Barnes from receiving a fair trial:

(1) The Defense Motion for Immunity on the murder charge should have been granted pursuant to the Protections of Persons and Property Act

An evidentiary hearing was held in front of the Honorable Judge DeAndrea Benjamin on March 30 and 31, 2022 to determine whether Mr. Barnes was immune from prosecution, and the Court later denied immunity by written order on June 14, 2022. Defense counsel filed a proposed order prior to the Court issuing its order denying immunity and believes that the Court misapprehended the facts and the law in this case, and believes immunity should have been granted as to the charges of murder.

Specifically, when the Court denied immunity under § 16-11-440(A) and § 16-11-440(C) it relied heavily on an account of events provided by Shakihla Smalls. Ms. Smalls was a resident

at the apartment complex where the shooting occurred and Mr. Barnes' gun was recovered at her home pursuant to a search warrant. At the immunity hearing, Investigator Emmit Gilliam testified that Ms. Smalls was at Mr. Barnes' apartment just prior to the shooting the morning of February 7, 2019. She stated that she went there to purchase marijuana. She saw Mr. Dash and Mr. Griffin in the living room together and told investigators that she saw Mr. Barnes come out of his bedroom and acknowledge the people in the living room, completely contradicting Mr. Barnes' statements that he had been asleep in his bed, believed that no one else was at home at the time and was awoken by a loud noise.

Throughout the written order denying immunity the Court references Ms. Smalls' version of events as support for its ruling. The order states that Ms. Smalls' testimony proves that Mr. Griffin was a social guest and did not make unlawful entry into the apartment, and that Mr. Barnes was aware of his presence and therefore was not entitled to a presumption of reasonable fear. Furthermore, Ms. Smalls' claim that she went there to purchase marijuana also meant that the residence was being used to further an unlawful activity very close to the time of the shooting.

The problem with Ms. Smalls' account of events is that it is demonstrably untrue and the State knew, or should have known, it was untrue at the time it was asserted to the Court as evidence. Ms. Smalls' statement about being at Mr. Barnes' apartment prior to the shooting that morning was not disclosed to defense counsel until Sunday, March 20, 2022 – over three years after her initial statement to law enforcement immediately following the shooting (which did not include anything about buying marijuana or being at Mr. Barnes' apartment beforehand). At the immunity hearing, defense counsel questioned Investigator Gilliam about surveillance video footage of the apartment complex showing Ms. Smalls at her apartment at Building 17 during the

exact timeframe that she said she was at Mr. Barnes' apartment at Building 14. Investigator Gilliam agreed that she could not be in two places at one time. *See Attachment 1 (Portion of Transcript)*. He also agreed that two other witnesses stated multiple times that no one entered or left Mr. Barnes' apartment after Eric Griffin went inside, indicating that it would not be possible for Ms. Smalls to have seen Mr. Griffin that morning.

In addition to the witnesses' testimony and video surveillance footage, at the time of the shooting Ms. Smalls was out on bond and wearing an ankle monitor pursuant to a bond condition. On March 18, 2022 Assistant Solicitor Dale Scott contacted Offender Management Services (OMS) to inquire about Ms. Smalls' ankle monitor data on the date of the incident and whether it would show her at Mr. Barnes' apartment that morning. *See Attachment 2 (Emails)*. Additionally, defense counsel requested Ms. Smalls' ankle monitor data from OMS (including geolocation information) on March 31, 2022 and Mr. Scott was included on the same day response that contained the requested information. *See Attachment 3 (Emails)*. Defense counsel provided that data to a digital forensic expert who was able to track Ms. Smalls' location the morning of the shooting. It definitively shows that Ms. Smalls was not at Mr. Barnes' apartment when she claimed to be there before the shooting. *See Attachment 4(Affidavit)*.

The State had the OMS data from Ms. Smalls' ankle monitor by March 31, 2022 and knew, or should have known, what that data revealed. On April 19, 2022 the State submitted a proposed order to the Court, almost entirely adopted into the Court's final order denying immunity. The proposed order contained the statements from Ms. Smalls as a basis for denying immunity, statements which the OMS data proves are untrue. *See Attachment 5 (Proposed Order)*. A prosecutor's failure to correct knowingly false testimony is a due process violation. *Napue v. Illinois*, 360 U.S. 264 (1959). In this case, the prosecutor not only failed to correct

false testimony, he provided it to the Court as a basis for denial of immunity. The State did not call Ms. Smalls as a witness at the trial, leading to a presumption that the State is aware of her credibility issues. However, as of the time of this filing no correction to the prior testimony provided at the immunity hearing has been made and the Court's ruling relied heavily on it. Had the Court been aware of the fact that Ms. Smalls was not in fact at Mr. Barnes' apartment that morning, did not see Mr. Griffin, Mr. Dash or Mr. Barnes, and did not purchase marijuana that morning, the request for immunity would have been granted.

(2) Admission of Defendant's statements about selling marijuana out of his home, pictures of ammunition found in the home and Mr. Barnes' prior possession of unrelated guns was error under SCRE 403, 404(b)

At trial, and over defense objections, the State cross-examined Mr. Barnes about photos in his phone of him holding unrelated guns and admitted a photo of unrelated ammunition that was recovered in Mr. Barnes' apartment by Investigator McIntyre. Mr. Barnes was also questioned about his admission to law enforcement that he sold marijuana. Evidence of Mr. Barnes holding a gun prior to the shooting, being around a gun prior to the shooting or ammunition found in his apartment was irrelevant to any fact in issue in this case. Mr. Barnes admitted to possessing a gun at the time of the shooting and that gun was recovered by law enforcement. Additionally, evidence of any marijuana dealing by Mr. Barnes was not relevant where there was no evidence, circumstantial or direct, that Mr. Barnes was attempting to sell marijuana on the morning of the shooting.

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury... " Rule 403, SCRE. "Evidence is unfairly prejudicial if it has an undue tendency to

suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. I, 7,545 S.E.2d 827, 830 (2001

This presented unfair prejudice because it led the jury to rely on their emotional dislike for Mr. Barnes holding other guns, possessing a gun or being around a gun and ammunition as a basis for finding him guilty of murder. The imagery of Mr. Barnes being around copious amounts of guns, even though there was no substantial evidence to support that assertion, incited the emotions of the jury where Mr. Barnes admitted to shooting Mr. Dash and Mr. Griffin. This imagery the evidence created outweighed any probative value of the images where Mr. Barnes admitted to possessing a gun and using a gun on the day of the perceived robbery and shooting. This prejudicial effect was demonstrated during the sentencing proceeding when the Court referenced Mr. Barnes living a dangerous lifestyle and possessing many weapons, when in fact, the evidence was that Mr. Barnes only ever owned two guns at one time, and was lawfully allowed to own guns.

Furthermore, evidence of Mr. Barnes' prior marijuana dealing and possession was more prejudicial than probative. Marijuana use and dealing is irrelevant to any facts at issue in this case therefore there is no probative value of such evidence. Such evidence possessed no probative value as Mr. Barnes was asleep at the time of the disturbance in his apartment and did not have knowledge of who was in his living room. Subsequently, evidence of prior marijuana dealing or possession should have been excluded as more prejudicial than probative and its admission denied Mr. Barnes' a fair trial.

Lastly, presentation of Mr. Barnes holding unrelated guns and ammunition was improper character evidence, devoid of any real probative value or relevance in this case.

Evidence that Mr. Barnes had previously been near a gun or possessed a photo of a gun is not circumstantial evidence of malicious intent other than to say because Barnes had been near guns or possessed photos of guns he is a bad guy who possessed a gun with a malicious intent on the morning of February 7, 2019.

Similarly, evidence that Mr. Barnes previously sold marijuana or possessed marijuana had no probative value or relevance to this case, Mr. Barnes' motive, intent or mistake of fact on the date of the incident where forensic evidence of Mr. Barnes' cell phone supported Mr. Barnes' testimony that he was asleep that morning and unaware of Mr. Griffin and Mr. Dash in the living room. The introduction of such evidence simply suggested to the jury that because Mr. Barnes was previously engaged in criminal activity he was engaged in criminal activity on the morning of February 7, 2019 and had malicious intentions. Therefore, evidence of prior marijuana dealing and possession should have been excluded and its admission denied Mr. Barnes a fair trial.

(3) Admission of Defendant's rap lyrics was error under SCRE 403, 404(b), the U.S. Const. amend I and SCRCrimP 5(a)(1)(C)

While Mr. Barnes was testifying about the events of February 7, 2019, the State, over defense objection, elicited testimony from Mr. Barnes about rap lyrics from a music video that Mr. Barnes posted to his SoundCloud account. The lyrics were from a song titled "Let Me Explain" and the State argued it was a song about the shooting of Mr. Dash and Mr. Griffin.

The lyrics were not turned over to defense counsel prior to the State's questioning of Mr. Barnes which is a clear violation of SCRCrimP 5 (Rule 5). In response, the State argued that the song was contained on Mr. Barnes' cell phone extraction that defense counsel had provided to the State; a clear impossibility since Mr. Barnes did not possess his phone after his arrest.

Allowing the State to cross-examine Mr. Barnes about rap lyrics that were not turned over pursuant to Rule 5 was an error.

While there are no cases directly on point for Rule 5(a)(l)(C), in *State v. Lawton*, 675 S.E.2d 454 (S.C. App. 2009), the Court of Appeals explicitly held that there is no distinction regarding the State's obligations to provide materials it uses for impeachment purposes versus materials it uses in its case-in-chief under Rule 5(a)(l)(A). The Court of Appeals reversed the trial court for allowing the use of materials that had not been turned over to the Defense, but which the State used for impeachment purposes under Rule 5(a)(l)(A), without ruling on the Rule 5(a)(l)(C) issue. The late disclosure in this case prevented the defense from examining the video, investigating its origin, and reviewing the lyrics with Mr. Barnes prior to his testimony.

Additionally, the rap lyrics should have been excluded because the probative value was substantially outweighed by the danger of unfair prejudice, the lyrics were used as improper character evidence and their use against Mr. Barnes was a violation of his right to free expression under the First Amendment of the United States Constitution. Defense counsel adopts and asserts the same arguments from its pretrial motion to exclude, and asserts those grounds as a reason for a new trial.

(4) **The Court's refusal to admit the Defendant's prior consistent statement, contained in the police interview room was error and denied his right to present a complete and full defense , a well as to rebut the charge of fabrication under SCRE 801(d)(1)(B)**

The State seized upon the Court's error allowing Mr. Barnes to be questioned about rap lyrics, and accused Mr. Barnes of fabricating his account of what happened on the morning of the shooting. He also accused Mr. Barnes of faking the remorse he expressed on the stand while testifying, by referencing the rap lyrics. In addition to the use of the rap lyrics, the State used a lay witness, Kevin Archie, to argue that Mr. Barnes gave three different accounts of what

occurred in his apartment on the morning of the shooting.

To rebut the State's efforts to attack Mr. Barnes' credibility, defense counsel on re-direct attempted to admit portions of Mr. Barnes' videotaped confession to law enforcement conducted a couple of hours after the shooting. Pursuant to SCRE 801(d)(1)(B), Mr. Barnes' prior consistent statement should have been admitted as non-hearsay because it was offered to rebut the State's charge that Mr. Barnes had fabricated his account of events. However, the Court denied admitting that evidence.

The State then seized upon that error and immediately on re-cross examination attacked Mr. Barnes' lack of remorse and accused him of manufacturing remorse on the stand. Defense counsel again tried to admit the prior statements to law enforcement which contained sobbing, crying, pained accounts of the shooting of his friends. The Court again denied admission of the statements. The prejudice of this error was demonstrated during sentencing when the Court mistakenly stated that Mr. Barnes did not show remorse for the killing of Mr. Griffin. In fact, the prior consistent statements reflected a great deal of remorse for the killings of both Mr. Dash and Mr. Griffin.

(5) The Court's jury instruction regarding defense of habitation was inadequate and erroneous

There was ample evidence submitted during the trial to warrant both a self-defense jury instruction, as well as the analogous yes distinct instruction of defense of habitation. Testimony from state witnesses as well as defense witnesses described the condition of the apartment, objectively indicating that Mr. Dash and Mr. Griffin were engaged in a violent physical altercation just prior to the shooting. Evidence of damaged walls, tables, overturned television, blunt force trauma and torn earrings is consistent with the same. Testimony from state witness

Samuel Thomas, as well as the Defendant, established that it was the schedule and routine of the occupants for Mr. Thomas and Mr. Dash to be gone from the apartment and at work during the time of the incident. The Defendant testified extensively that given his reasonable belief that his apartment was empty that morning, coupled with the violent noises he heard coming from his living room, that he believed he was being home invaded the morning of the incident.

At the end of the third day of trial, during a charging conference, defense counsel submitted request to charge number 8, which was the Defense of Habitation. This charge, citing the seminal case of *State v. Bradley*, 126 S.C. 528 (1923), was requested as distinct to the defense of self-defense, as "defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force, including deadly force, to expel the trespasser." *State v. Sullivan*, 345 S.C. 169, 173 (2001). The Court refused to grant this request to charge at that time. The following morning the Court sought any additional comment concerning jury charges prior to the beginning of closing arguments, and once again defense counsel implored the court to consider charging on Defense of Habitation. After hearing further argument on this subject, the Court agreed that it should err on the side of caution and charge on Defense of Habitation. The Court refused to charge based on defense counsel's submitted charge number 8, but instead announced it would charge from its standard Defense of Habitation charge. After closing arguments, the Court charged the jury, and then outside of the presence of the jury the Court inquired of counsel whether there were any exceptions to the charges. Defense counsel immediately objected to the Court's charge regarding Defense of Habitation, as it did not make any mention of the charge being distinct from Self-Defense, and the charge was incomplete as it

did not include the required language concerning how Defense of Habitation does not require a showing of imminent danger to person or property prior to taking measures to use force to end the obtrusion into one's home. Defense counsel asked the Court to recharge Defense of Habitation to include the previously omitted language and the Court declined this request.

State v. Rye, 357 S.C. 119 (2007) is instructive regarding the error caused by an incomplete Defense of Habitations charge. The Court in *Rye*, in refusing to instruct on defense counsel's proposed charge, ended up charging an incomplete Defense of Habitation charge, thereby depriving the jury of the critical language that ***"unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser"*** *Id.* at 124 (emphasis added). Like the incomplete charge in Rye, the charge in Mr. Barnes' case incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of injury or harm. This is reversible error and grounds for a new trial.

(6) All issue raised pretrial, during trial and in this motion, upon which the Court did not rule for the defense or provide an adequate remedy have resulted in cumulative error and prejudice, the result of which required a new trial as the only remedy

Defense counsel moves for a new trial because the cumulative effect of all of the issues raised by counsel has resulted in cumulative prejudice and a cumulative violation of Mr. Barnes' right to a fair and impartial trial under the United Constitution and the South Carolina Constitution. U.S. Const. amend. VI; S.C. Const. art 1, section 14. The only remedy is for the court to grant a new trial.

For all of the aforementioned reasons a new trial should be granted in this case.

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This 22nd day of December, 2022
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	INDICTMENT NOS: 2021GS4001294; 2021GS4001294
STATE OF SOUTH CAROLINA	)	
VS.	)	ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL
Antonio Barnes,	)	
DEFENDANT,	)	

2023 SEP -7 PM 3:43

This matter is before the Court upon motion of the Defendant for a new trial.

Having fully considered the motion and the arguments made therein, the motion is hereby denied.

AND IT IS SO ORDERED.

CLIFTON NEWMAN
PRESIDING JUDGE

August 25, 2023

RECEIVED
Sep 07 2023
SC Court of Appeals

WITNESSES

(S) Emmit D Gilliam
– Columbia Police Department

ARREST WARRANT NUMBER

2019A4021600444

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 14 2021

VERDICT

GUILTY

SCANNED

Foreperson of Petit Jury
Date: 12/8/22

[redacted]

DOCKET NO. 2021GS4001292

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

67

THE STATE
vs.

Antonio Vashon Barnes Jr

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.

1260

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 13th, 2021, the Grand Jurors of Richland County present upon their oath:

MURDER

That Antonio Vashon Barnes Jr did in Richland County, on or about February 7, 2019, kill the victim, Eric Griffin, with malice aforethought, either express or implied, by means of Shooting with a firearm, 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) Emmit D Gilliam
– Columbia Police Department

ARREST WARRANT NUMBER

2019A4021600442

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 14 2021

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 12/8/22

DOCKET NO. 2021GS4001294

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

67

THE STATE
vs.

Antonio Vashon Barnes Jr

Indictment for
WEAPONS / POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO SENTENCED TO LIFE WITHOUT PAROLE OR DEATH

SC Code: **16-23-0490**
CDR Code: **0549**

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.

1262

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 13th 2021, the Grand Jurors of Richland County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Vashon Barnes Jr did in Richland County, on or about February 7, 2019, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, 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

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Antonio Vashon Barnes Jr
AKA:
Race: BLACK Sex: M Age: 28
DOB: [redacted]-1994 SS#:
Address: [redacted]
City, State, Zip: Columbia, SC 29203
DL#: SID#:

INDICTMENT/CASE#: 2021 - GS - 40 - 1292

A/W#: 2019A4021600444
Date of Offense: 2/7/2019
S.C. Code § 16-03-0010
CDR 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 PLEADS

TO: Murder / Murder

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

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST:

Scott, Dale 73081 SC Bar # Defendant 79079 SC Bar#

WHEREFORE, the Defendant is committed to the ☒**State Department of Correction,** ☐**County Detention Center,** for a determinate term of 35 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. 576 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.

SCANNED

STATE VS. Antonio Vashon Barnes Jr INDICTMENT/CASE#: 2021 - GS - 40 - 1292

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	$ 107
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride/Jeanette W. Harris

Court Reporter:

Presiding Judge: G. Warren

Judge Code: 2127

Sentence Date: Dec 13, 2022

SCCA/217 (07/2021)

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

STATE)
VS.)
Antonio Vashon Barnes Jr)
AKA:)
Race: BLACK Sex: M Age: 28)
DOB: [redacted]1994 SS#::)
Address: [redacted])
City, State, Zip: Columbia, SC 29203)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021 - GS - 40 - 1294

A/W#: 2019A4021600442
Date of Offense: 2/7/2019
S.C. Code § 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

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

In disposition of the above indictment comes now the Defendant who was X CONVICTED OF or PLEADS TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST:

Scott, Dale 73081 SC Bar # Defendant 79079 SC Bar#

WHEREFORE, the Defendant is committed to the ☑ **State Department of Correction,** ☐ **County Detention Center,** for a determinate term of 5 days/months/years/Time Served ☐ **Youthful Offender Act** not to exceed ___ years and/or to pay a fine of $ ____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ ____; ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 576 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. Antonio Vashon Barnes Jr INDICTMENT/CASE#: 2021 - GS - 40 - 1294

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
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride
Court Reporter: Davis

Presiding Judge: C Newman
Judge Code: 2127
Sentence Date: Dec 13, 2022

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
Apr 09 2025
SC Court of Appeals

Lara M. Caudy
Senior Appellate Defender

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

ATTORNEY FOR APPELLANT

This 9th day of April, 2025.

RECEIVED
Apr 09 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon W. Joseph Maye, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 9th day of April, 2025.

Lara M Caudy

Lara M. Caudy
Senior Appellate Defender

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

ATTORNEY FOR APPELLANT

From: Mcinnis, Sara
To: jmaye@scag.gov
Cc: Donna D"Alessio; Caudy, Lara
Subject: 2023-001390 The State v. Antonio V. Barnes, Jr. Record on Appeal Vol. 3
Date: Wednesday, April 9, 2025 10:11:00 AM
Attachments: 2023-001390 The State v. Antonio V. Barnes, Jr. Record on Appeal Vol 3 of 3.pdf

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Good Morning Mr. Maye,

Attached for service in the above-referenced case is volume 3 of the record on appeal.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330