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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.

MARTIN DIXON,

APPELLANT

APPELLATE CASE NO. 2023-000597

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STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	Case No.: 2020GS4001501, 2020GS4001502
State of South Carolina,	
vs.	
Martin Dixon,	
Defendant.	April 3, 2023

TRANSCRIPT OF TRIAL - DAY 1 OF 4

BEFORE THE HONORABLE CLIFTON B. NEWMAN
Circuit Court Judge, presiding

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THE COURT: Alrighty.

What do we have now?

MS. ZMROCZEK: So, Judge, I don't know if we want to do the competency issue before or after we select jury. So that was the one thing. I do have his reports to hand up if -- if the Court would like to look at them at some point.

THE COURT: All right.

Who do we have there? Who are you?

MS. ZMROCZEK: This is Mr. --

THE DEFENDANT: Martin Dixon.

THE COURT: Martin Dixon?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

MS. ZMROCZEK: And then the only other issue I think before we select the jury, Judge, is I do have an issue with one of the indictments. And so I do want to address that before.

THE COURT: Okay. What's the problem with the indictment?

MS. ZMROCZEK: So it's the indictment for arson third. Your Honor, I believe you have a copy of it up there.

THE COURT: I do.

MS. ZMROCZEK: So it reads the following: That Martin Dixon did in Richland County on or about August 7, 2019, willfully and maliciously cause an explosion, set fire to, burn, or cause a burning which resulted in damages, to wit, the defendant did willfully and unlawfully set fire to a blank belonging to Antrone Dubose.

THE COURT: And -- and what is the problem with it?

MS. ZMROCZEK: Well, Your Honor, it fails to identify what the grand jury considered as far as what was willfully and unlawfully set fire to; and therefore, fails in its notice. So we would move to quash that indictment. Just that one, not the others.

THE COURT: Okay. That's arson third. How many indictments do we have?

MR. SCOTT: Three.

MS. ZMROCZEK: Three.

THE COURT: All right.

Mr. Scott.

MR. SCOTT: Well, I was thinking I might move to amend it. But then the common thought of arson is she only gets five strikes. So I might just forgo calling that indictment, just proceed with

the kidnapping and the attempted murder. It is attempted murder a 10-strike? I don't -- I don't show it listed in the statute.

THE COURT: Murder is 10, not attempted murder.

MS. ZMROCZEK: Five.

THE COURT: Five strikes.

MR. SCOTT: Okay. We'll forgo calling that arson indictment. I will just call -- we'll proceed with the kidnapping and attempted murder.

THE COURT: So do you want me to rule on it? They're not calling it.

MS. ZMROCZEK: If they are not calling it. I just didn't want it to be read to the jury and then argue it. And then, it -- you know.

THE COURT: Understand.

Let's go to the competency issue.

MS. ZMROCZEK: And, Your Honor, just so -- just for your knowledge, he is still on a mental health hold at the jail as well, even though he has been -- so I'm -- I was appointed to this case after a few different lawyers. So I actually did not participate in having him evaluated for competency or criminal responsibility. That was done prior to my appointment. But I did receive

copies of the two -- the two reports that -- that I handed up. I believe the -- the state has a copy of the criminal responsibility one. I don't know that they have one of the -- or whichever one the one. The one that's not ex parte (inaudible).

THE COURT: So, Mr. Dixon, if you will stand, and we're going to swear you in.

THE CLERK: Raise your right hand, please.

Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE DEFENDANT: Yes.

THE CLERK: Thank you.

THE COURT: So tell me your name?

THE DEFENDANT: Martin Dixon.

THE COURT: And Mr. Dixon, how old are you?

THE DEFENDANT: 53 years old.

THE COURT: What's your date of birth?

THE DEFENDANT: [redacted].

THE COURT: All right.

And you are from Columbia?

THE DEFENDANT: No.

THE COURT: Where are you from?

THE DEFENDANT: I was living in Charleston.

THE COURT: And what are you doing in Columbia?

THE DEFENDANT: I just came through; rode through.

THE COURT: You live in Charleston?

THE DEFENDANT: Yes.

THE COURT: And what's your address?

THE DEFENDANT: Oh, God. [redacted] Sugar Hill Road.

THE COURT: Including --

THE DEFENDANT: On the end of Orangeburg County and the end of Charleston. Holly Hill. I don't know if you're familiar with Holly Hill.

THE COURT: Is that Orangeburg or Charleston or Berkeley?

THE DEFENDANT: I'm not sure.

THE COURT: How long did you live out there?

THE DEFENDANT: About 10 years now.

THE COURT: Where were you born? What town?

THE DEFENDANT: New York.

THE COURT: And when did you come down here?

THE DEFENDANT: Probably about 15 years ago.

THE COURT: And do you have some kind of mental problem?

THE DEFENDANT: Yes.

THE COURT: What kind of problem do you have?

THE DEFENDANT: They diagnosed me with

several different things. I'm on medication right now.

THE COURT: Have you been in a lot of different mental hospitals?

THE DEFENDANT: All my life.

THE COURT: And --

THE DEFENDANT: I've been to the one down here, Three Rivers.

THE COURT: Have you ever had a jury trial before?

THE DEFENDANT: No, sir.

THE COURT: Do you know what you are charged with now, what kind of crimes you're charged with?

THE DEFENDANT: Not really. They tell me arson, attempted murder.

THE COURT: Yeah. You have those two. And then what is the third one?

THE DEFENDANT: Kidnapping.

THE COURT: And how do you plan to plead to those charges?

THE DEFENDANT: Not guilty.

THE COURT: And you want to a jury trial?

THE DEFENDANT: Yes.

THE COURT: Had you had a chance to explain your side of the story to your lawyer?

THE DEFENDANT: Yes.

THE COURT: And you think you're ready to have a trial?

THE DEFENDANT: Yes, sir.

THE COURT: You think you understand what's going on and what you're getting ready to do?

THE DEFENDANT: Yes, have court.

THE COURT: So we're going to -- you see those seats over there, the right seats?

THE DEFENDANT: (No audible response.)

THE COURT: You know who's going to sit over there, right?

THE DEFENDANT: Do I sit over there?

THE COURT: No. I said: Do you know who is going to be sitting over there in those chairs?

THE DEFENDANT: I never -- I never been in a court before.

THE COURT: You never been in a court? You have a criminal record?

THE DEFENDANT: No. I don't have -- I don't have anything.

THE COURT: This is your first time around?

THE DEFENDANT: I mean, I was young, years ago.

THE COURT: How old are you now?

THE DEFENDANT: I'm 53.

THE COURT: The last 30 years, you've never been to court and had to see a judge?

THE DEFENDANT: I've been on a lot of medication, Judge. They got me on Zoloft and a whole bunch of other stuff. I can't even --

THE COURT: Well, do you think you have enough competency to have a jury trial?

THE DEFENDANT: I guess, if I get off this medication.

THE COURT: Let me see what the doctor says. That you are aware of the charges against you and you were able to name the charges. You report that your charges are serious and estimate you could receive up to 75 years in prison if you were convicted of those charges. Did you know that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Who explained that to you?

THE DEFENDANT: My attorney.

THE COURT: All right.

When asked where that figure came from, he said, "I looked it up." You looked it up too?

The doctor said when he asked you where'd you get 75 years from, you told him you looked it up.

THE DEFENDANT: No.

THE COURT: He says you were able to state his attorney's name. Who's your lawyer? What's her name?

THE DEFENDANT: Aimee.

THE COURT: Okay.

He says he had only spoken with his attorney on two occasions in two years.

MS. ZMROCZEK: That -- that was prior to me.

THE DEFENDANT: That wasn't -- that wasn't her.

THE COURT: Oh. How many times have you talked with your new lawyer Aimee?

THE DEFENDANT: As far as on the phone?

THE COURT: How long -- how many times have you talked to her, Aimee?

THE DEFENDANT: In person or?

THE COURT: In person; on the phone?

THE DEFENDANT: Several times.

THE COURT: Many times?

THE DEFENDANT: Yes.

THE COURT: All right.

And you did not have a bond?

THE DEFENDANT: No, sir.

THE COURT: And you know the purpose of the attorney -- what the attorney's job is?

THE DEFENDANT: I guess to figure out that case. I don't know.

THE COURT: Try to help you out? How about the prosecutor at the table over there?

THE DEFENDANT: I don't know.

THE COURT: Do you know why they're here?

THE DEFENDANT: I don't know.

THE COURT: They're trying to get -- they're trying to get you proven guilty.

THE DEFENDANT: Uh-huh.

THE COURT: They're on the other side. They're trying to prove that you're guilty. Did you know that?

THE DEFENDANT: I --

THE COURT: Does it matter to you?

THE DEFENDANT: It matters. I just -- I don't know them.

THE COURT: I know that you didn't know them. But, I mean, why did you think they were here?

THE DEFENDANT: I don't know.

THE COURT: He states he has received his motion for discovery and he's aware of some of the evidence against you. Do you know what -- you know what evidence they've got against you?

THE DEFENDANT: Not really.

THE COURT: He states he can tell his attorney everything he remembers about the allegations against him. You can do that? You can tell your -- your lawyer all about what you did and what you didn't do? Have you done that?

MS. ZMROCZEK: You have to say "yes" or "no."

THE DEFENDANT: Yes. Yes, Your Honor.

THE COURT: Now this says that you understand the role of the solicitor. You know what a solicitor is, don't you?

THE DEFENDANT: No, Your Honor.

THE COURT: The prosecutor.

THE DEFENDANT: I don't know.

THE COURT: You don't know about a prosecutor?

THE DEFENDANT: No, Your Honor.

THE COURT: Well, they're here to -- you told the doctor here that the solicitor is there to convict you. He states that the solicitor is seeking justice and want to lock you up and take you away from society.

THE DEFENDANT: The doctor -- doctor never talked to me.

THE COURT: That's what the doctor said that you said.

THE DEFENDANT: No, Your Honor.

THE COURT: Well, do you understand that that's what the solicitor's job is?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What's the job of the judge? What's my job?

THE DEFENDANT: I guess to find me guilty or not guilty.

THE COURT: That's up to the jury. He says the judge's job is to make a decision on whether or not to go along with the solicitor or go along with my lawyer. He states that if he were to find -- he states that if he were to be found not guilty, the judge would release him. And if found guilty, the judge will decide his prison sentence. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

So if you got found guilty, where would you want to go -- if you got found not guilty, where would you want to go?

THE DEFENDANT: Home.

THE COURT: If you got found guilty, where do you think you're going?

THE DEFENDANT: Prison.

THE COURT: All right.

And who's going to make that decision?

THE DEFENDANT: You and them, I guess.

THE COURT: Who's going to decide whether you go home or go to prison if the jury finds you guilty?

THE DEFENDANT: I guess you.

THE COURT: All right.

Do you know how many jurors -- jury people we're going to put in those seats over there?

THE DEFENDANT: No, Your Honor.

THE COURT: We're going to put 14 over there. Only 12 of them can decide. We're going to pick 14 and have two extras.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now are you pleading "guilty" or "not guilty"?

THE DEFENDANT: Not guilty.

THE COURT: So as far as you are concerned, you're not guilty?

THE DEFENDANT: Not guilty, Your Honor.

THE COURT: And you know you are not guilty?

THE DEFENDANT: I know I'm not guilty.

THE COURT: Well, but they believe that

you're guilty. The prosecutor believes that you're guilty. Did you know that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And they plan to put some witness up -- witnesses on the witness stand over there to try to prove to the jury that you're guilty. Did you know that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that's the purpose of a trial. You're aware of that, right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now they might have made you a plea offer. Did they make you a plea offer -- plea bargain?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And did you turn it down?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What was the plea -- plea bargain offer they made to you?

THE DEFENDANT: Twelve, I think.

THE COURT: Twelve years?

THE DEFENDANT: I think so.

THE COURT: And you didn't want to do 12 years?

THE DEFENDANT: No, Your Honor.

THE COURT: How many do you want to do?

THE DEFENDANT: Zero.

THE COURT: You don't want to do any, huh? That means you've got this sense, right?

THE DEFENDANT: Yeah. I guess.

THE COURT: Pretty good sense. So if somebody is lying on you on the witness stand, what would you do? If somebody was on the witness stand and they started lying, what would you do?

THE DEFENDANT: Nothing I can do, I guess.

THE COURT: What are you going to do with your attorney? I mean, what -- what would you want your attorney to do?

THE DEFENDANT: Show -- show them that they lying.

THE COURT: Pretty good answer.

You understand you can't just jump up and start hollering or anything. You've got to be quiet?

THE DEFENDANT: Yes, sir.

THE COURT: You know that much?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

Let's see. Well, this doctor, his name is Ronald -- Richard L. Frierson, MD. He's a

Professor of Psychiatry at the University of South Carolina School of Medicine. He says, "In summary, Mr. Dixon has had prior legal experience in the criminal justice system; and therefore, would be presumed to have an understanding of court proceedings."

But you said you haven't had any experience?

THE DEFENDANT: Well, I had experience, but I don't remember how --

THE COURT: What kind of experience did you have?

THE DEFENDANT: I was younger. And also I had head injuries. So I don't -- it's a lot of stuff I don't really remember. I had plastic surgery. I had hemorrhaging in my head.

THE COURT: This doctor said you had a good enough understanding in his opinion to -- to help your attorney in defending -- in defending you, that you had enough understanding to help the attorney to assist you in defending -- in defending you in this case. You agree with that?

THE DEFENDANT: What -- what do you mean, Your Honor?

THE COURT: That you have enough understanding about what's going on to help your

lawyer to defend you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

So do you have any more information to present on his case by the state or the defense?

MS. ZMROCZEK: No, Your Honor. I just -- I just, you know, in order for PCR purposes, etc., I wanted to make sure that the Court was aware that he is currently on a mental hold status at the jail and that he has had a long history, starting back in New York for treatment at Bellevue through treatment multiple times at Three Rivers here in Columbia -- or West Columbia, I guess. And -- and I just wanted to make sure.

I understand that regardless of what the doctors say, it is certainly the Court's determination of whether or not he's competent to go forward. I just wanted to make sure that all of that was properly argued and protected in this case.

THE COURT: So do you believe that he's competent to stand trial?

MS. ZMROCZEK: My concern, Your Honor, only come with the challenges that if he were to testify about his -- with his memory issues. And

so that, I think, would be a challenge. It's something that I have to consider. I think that would be probably revisited when we do the colloquy again. And he and I are going to discuss it some more. So those are my only hesitations, Your Honor, is if he does testify, which he certainly, you know, has the right to do, whether or not his memory or his -- his other mental health issues may affect his ability to testify. So that's -- that's my only concern.

THE COURT: All right.

In -- well, in connection with his ability, his capacity to conform, Dr. Frierson has the opinion that -- that he had sufficient capacity to conform his conduct with -- does he agree with that or disagree with that?

MS. ZMROCZEK: I -- I wasn't there, Your Honor, so I'm not sure. This is what I can tell the Court, and I'm not trying to be cute. Seriously, I'm trying to tell the Court that I had discussions with him about the jury process, about the plea process, about the trial process. I think that he understands that part. If I may --

Is that correct?

THE DEFENDANT: Yes.

MS. ZMROCZEK: Okay. So I wanted to see.

So I do believe he understands the process. Like I said, my only concerns would be if he were to testify. And I think that that's probably something that we don't need to address today. Because, you know, we haven't even gotten to our part of the case yet.

THE COURT: Well, I would make a finding of his capacity to stand trial upon the issue of his -- his -- the capacity to conform that can be a jury issue if you are claiming not guilty by reason of insanity or -- or some other defense.

MS. ZMROCZEK: Right.

THE COURT: Because that -- that's a -- can be a jury question if you want the jury to consider a finding of not guilty or not guilty by reason of insanity or -- or guilty but mentally ill, all the various options, or just plain guilty.

MS. ZMROCZEK: I would prefer none of those, Your Honor. I think that what we're -- what our defense -- we're not necessarily putting forward any affirmative mental health defenses at this time.

THE COURT: All right.

Anything from the state?

MR. SCOTT: No, Your Honor. Do you care to hear his criminal history? He has had significant exposure to the court system.

THE COURT: What else is on his rap sheet?

MR. SCOTT: Going back to '92, he was convicted of a disorderly conduct as well as malicious injury to personal -- real property. Got three years suspended to three years' probation.

THE COURT: Was that here or in New York?

MR. SCOTT: That would be a state charge. Orangeburg County.

THE COURT: You remember that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You pled guilty or had a trial?

THE DEFENDANT: I believe I pled "guilty."

THE COURT: All right.

MR. SCOTT: He was convicted in '95 assault and battery high and aggravated nature. He got six years suspended to three years and two years' probation.

THE COURT: You remember that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Who did you assault?

THE DEFENDANT: Other person that I know.

THE COURT: Who is that?

THE DEFENDANT: It was -- it was a friend of mine.

THE COURT: What's his name?

THE DEFENDANT: I don't --

THE COURT: Man or woman?

THE DEFENDANT: It was a man, I think.

THE COURT: Okay. What else he had?

MR. SCOTT: In 1997, St. Matthews Police Department charged him with pointing and presenting and a DUS. He was convicted of the DUS. I show no disposition.

THE COURT: You've been in driving in St. Matthews -- drunk -- drunk driving in St. Matthews?

THE DEFENDANT: No, Your Honor. I never had a drunk driving charge.

MR. SCOTT: Convicted of DUS, Your Honor.

THE COURT: You was driving under suspension?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Whose car you driving?

THE DEFENDANT: Mine.

THE COURT: You have a driver's license?

THE DEFENDANT: I had one. It's suspended

because I didn't turn the tag in. I didn't know.

THE COURT: So you had a driver's license?

THE DEFENDANT: Yes, Your Honor.

THE COURT: How long had your driver's license?

THE DEFENDANT: Long time. Long time.

THE COURT: So how could you get a driver's license with the mental problems you were saying since you were a baby?

THE DEFENDANT: I had different mental problems. And I had an injury, a head injury, which I had to get -- had to drain out fluids in my head and stuff.

THE COURT: How old were you when you had that happen, the injury?

THE DEFENDANT: I believe it was a few years ago.

THE COURT: A few years ago?

THE DEFENDANT: Yeah.

THE COURT: Wasn't that long ago?

THE DEFENDANT: No.

THE COURT: All right.

What else do you have on him?

MR. SCOTT: Your Honor, he was convicted in 1998 of grand larceny, failure to stop for a blue

light. I show a sentence -- I believe that was also out of St. Matthews. I show a sentence of --

THE COURT: What were you stealing in?

THE DEFENDANT: Excuse me?

THE COURT: What were you stealing in St. Matthews?

THE DEFENDANT: I didn't steal anything, Your Honor.

THE COURT: It says grand larceny?

THE DEFENDANT: I didn't steal anything.

THE COURT: Did you go to jail for it?

THE DEFENDANT: They stopped me, gave me a fine. Then I went to jail for failure to stop blue lights or something.

THE COURT: So you were still driving without a -- under a suspended license?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

What else do you have on there?

MR. SCOTT: No, he actually -- he went to prison on those two charges, three years suspended to two years and one-year probation.

THE COURT: How many different times you been to prison?

THE DEFENDANT: Once. Just one time, Your

Honor.

THE COURT: How many times you been in jail? Twenty, 30, 40?

THE DEFENDANT: Oh, no.

THE COURT: Not that many?

THE DEFENDANT: No, Your Honor.

THE COURT: Five or 10?

THE DEFENDANT: I'm going to say less than 10 times.

THE COURT: Less than 10 times.

All right.

MR. SCOTT: In '98, despite what he says, his rap sheet shows he went to prison on the grand larceny, failure to stop. After he was released, he was convicted of a CDVHAN and assault of police officer while resisting. He got 10 years on that.

THE COURT: CDVHAN. Was that on your girlfriend or your --

THE DEFENDANT: Yeah. Yes, Your Honor.

THE COURT: What'd you do?

THE DEFENDANT: During -- during that time, me and her, we were on drugs real bad during that time.

THE COURT: What did you do to her? Choked her? Hit her? Cut her?

THE DEFENDANT: No, no. It wasn't --

THE COURT: Smacked her?

THE DEFENDANT: No. Just grabbed her.

THE COURT: Grabbed her.

THE DEFENDANT: Yeah.

THE COURT: How much time did you get for that?

THE DEFENDANT: I don't remember getting no time for that.

THE COURT: The rap sheet said he got how much time?

MR. SCOTT: Ten years suspended upon service of two years and then five years' probation.

THE COURT: Two years?

THE DEFENDANT: Probation.

THE COURT: And five years' probation.

All right.

What else you got on him?

MR. SCOTT: 2007 in Berkeley County, he was convicted of a simple assault and battery.

THE COURT: Berkeley County. I was telling you that Holly Hill was right on the line there.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Not Charleston County, but Berkeley County.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Who did you assault in Berkeley County?

THE DEFENDANT: Some guy. He tried to rob me.

THE COURT: He tried to rob you?

THE DEFENDANT: Yeah.

THE COURT: You were at a dope house or what?

THE DEFENDANT: No. On the street.

THE COURT: On the street in Holly Hill?

THE DEFENDANT: He asked me for some money. I told him I didn't have it. He tried to take, you know, the money from me.

THE COURT: They took him -- took him to jail instead of you?

THE DEFENDANT: We got in a scuffle and the police pulled up and they wouldn't listen.

THE COURT: They took you to jail?

THE DEFENDANT: They took both of us.

THE COURT: Both of y'all to jail.

All right.

THE DEFENDANT: They never convicted him for robbing me.

THE COURT: Let's see what else you've got.

MR. SCOTT: Just one -- he just has one

subsequent arrest. In 2007, he was arrested for a CDVHAN by the North Charleston Police Department. That did end in a nonconviction.

THE COURT: It was in Charleston, North Charleston?

MR. SCOTT: Yes, Your Honor.

THE COURT: Who were you fighting with then?

THE DEFENDANT: I don't even remember that, Your Honor.

THE COURT: It's CDV. So it has to be someone you lived with or had a baby with. You have any children?

THE DEFENDANT: No, sir.

THE COURT: So it must be a girlfriend or boyfriend?

THE DEFENDANT: I don't remember that.

THE COURT: Somebody.

All right.

Well, you've been -- so the part that the doctor says that you've been in enough court system -- you've been in and out of court so many times that you -- he believes you understand what goes on in court. Do you agree with that?

THE DEFENDANT: No, Your Honor.

THE COURT: You don't think you --

THE DEFENDANT: Never been in a jury or nothing like that. St. Matthews, Calhoun County has a little small courtroom --

THE COURT: He's just saying that you've been in court enough to understand what court is all about?

THE DEFENDANT: Some.

THE COURT: Not that you've been through some jury trials.

THE DEFENDANT: Yeah.

THE COURT: This going to be your first time in a jury trial?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you want one?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You didn't want one any of the other times?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. All right.

And you have a right to have one.

THE DEFENDANT: Right.

THE COURT: That's why we're here. You think you're ready to go?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

MS. ZMROCZEK: I think that covers everything.

THE COURT: Okay. Very good.

I find him competent to stand trial.

MS. ZMROCZEK: You want to make this --

THE COURT: Yeah. I want to make this part of the record.

MS. ZMROCZEK: And can we seal this?

THE COURT: Sealed, what says the state?

MR. SCOTT: I don't -- I don't really have any one way or the other.

MS. ZMROCZEK: Just because it's got statements in there, Your Honor, about his mental health and also statements about the case.

THE COURT: Okay. It will be sealed.

THE COURT REPORTER: Court's exhibit?

THE COURT: It's a Court's exhibit, sealed until further order of the Court.

(Court's Exhibit No. 1 is marked for identification and sealed by the Court.)

THE COURT: So what else do we have before we bring the jury in and pick them before lunch?

You're going to get dressed up on us?

MS. ZMROCZEK: He was cold, Your Honor.

THE COURT: Huh?

MS. ZMROCZEK: He was cold. He was shivering. So I asked my clerk to bring him a jacket.

THE COURT: Okay.

MS. ZMROCZEK: I think those are the only things really that we have to do before we pick the jury.

THE COURT: You're looking like a preacher now.

Okay. Let's see if we can get a jury then.

Anything about the voir dire? Anything? Anything special?

MS. ZMROCZEK: I was just handing to the state, Your Honor. There's only two questions. I don't object.

THE CLERK: You want me to go ahead and call them?

THE COURT: Yeah. You can go ahead and call them.

Anything about the defense's proposals?

MR. SCOTT: I don't see any, Your Honor. I'm just perusing. I don't have any objection.

THE COURT: So as far as these, you're asking are there anything about these allegations. You want me to tell the jury all that he's accused of

doing or the solicitor?

MS. ZMROCZEK: I think if the Court wants to read the two indictments, I --

THE COURT: Okay. Who is Antrone Dubose?

MS. ZMROCZEK: The alleged victim in this case.

THE COURT: It's a man or woman?

MS. ZMROCZEK: Man.

THE COURT: Do you know someone named Antrone Dubose?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Bring them on.

(The jury venire enters the courtroom.)

(Jury qualification and selection is held; not transcribed.)

THE COURT: All right.

Ladies and gentlemen, you-all have been in the jury -- to be in the jury. We're going to break for lunch. We have another matter at 2 o'clock. And then we'll be ready to start this case at 3 o'clock. So we are going to -- let's say 2:45. 2:45. We're going to have you go to the jury room, get acquainted, get some instructions from the bailiff, and return at 2:45 to start the case.

Please do not discuss the case in any form or fashion.

(The jury panel exits the courtroom at 1:09 p.m.)

THE COURT: Any matters before we break?

MS. ZMROCZEK: Do we want to do -- I (inaudible) the pretrial list that I sent you, Judge. Do you have a copy of it?

THE COURT: I don't know.

MS. ZMROCZEK: Okay. I'll go through it because I'm going to actually withdraw some of them.

Your Honor, in researching the motions to dismiss, the charges for violation of speedy trial, in looking at the -- and I just want to put on the record why I'm doing it to protect, Your Honor, the record.

Mr.-- Mr. Dixon had some conflicts with several attorneys. I understand -- he's been in jail for years. I understand his frustration. I do feel like a lot of the attorney -- between COVID and the attorney turnover, there's going to probably be a lot of fact explanation, Your Honor. So I just don't think that that carries much weight at this time. So I will withdraw that motion.

And Your Honor, I had the motion to dismiss the discovery violations. As it turns out, they didn't necessarily lose the information; they just never tested it. So I think that that's right for cross-examination. So I'm going to withdraw that one as well.

I do need to -- have the state certified that they have done a *Giglio* search as well as a *Riddle* and turned over everything that has -- that should've been turned over. We've gone back and forth several times. And I know that recently after it was supposed to be tried before I got COVID, they did provide me some more information with medical records I was seeking. But other than that, I think he addressed they just don't have --

And if I am speaking out of turn, just let me know.

They just don't have the fingerprints, DNA, any of that; is that correct?

MR. SCOTT: Yeah. We don't have any evidence of DNA or -- what was the other one?

MS. ZMROCZEK: Fingerprints.

MR. SCOTT: Or fingerprints.

THE COURT: All right.

MS. ZMROCZEK: And then I think we went through the -- and this may be something that we need to think about to discuss before we come back. But now that the -- I do have a motion to suppress any testimony regarding charge allegation against the defendant. And so I don't know where that kind of -- I imagine that they're going to put forth evidence of the arson. So I -- that may be something we need to address, Your Honor.

Also, I had another -- which kind of falls in line with that 404(b) *Lyle* evidence. But I think as Mr. Scott went through the record, he hasn't had anything since 2007. That's what I understood. So I don't think there's any of that information. So I think it would just be a question about the arson testimony that they may put forward.

THE COURT: Well, I mean, I don't know what the facts are. What -- what is he accused of doing?

MS. ZMROCZEK: So, Your Honor, I believe that the state's theory is that they -- Mr. Dixon and a codefendant put Mr. Dubose in the back of his car in the cemetery and then attempted to -- to maybe light it on fire. That was a failed attempt. It

didn't work.

THE COURT: So your motion is that they not say that they attempted to set it on fire?

MS. ZMROCZEK: Right.

THE COURT: And the state's response to that?

MR. SCOTT: I can't really prove attempted murder if I can't talk about what he attempted to do to kill the man. So -- but that would be the basis for the attempted murder charge, Your Honor.

THE COURT: Anything else on that issue?

MS. ZMROCZEK: No, Your Honor.

THE COURT: I deny the motion.

MS. ZMROCZEK: And then, Your Honor, I don't -- so my client did give a statement. It's my understanding that they are not going to move it in at this time. So if that changes, I think we would have to have a *Jackson v. Denno* hearing, but I do not believe that we have to. There was an identification made, but the victim knew my client and the codefendant for years, is my understanding. So I don't know that a lineup would be appropriate. But I did say that if we needed to do a *Biggers* hearing, I wanted to make the Court aware of that. I understand that maybe that they don't have the witnesses here today to

do that. But I just wanted to make sure that that was brought to the Court's attention.

THE COURT: Okay.

MS. ZMROCZEK: I think the rest, Your Honor, is just to deal with the jury -- once the evidence comes out to the jury.

THE COURT: Okay.

Anything else then from the state?

MR. SCOTT: Nothing from the state, Your Honor.

THE COURT: Okay. We'll -- we're supposed to be here -- at 2 o'clock, I have another hearing. 2:45 for the jury.

MS. ZMROCZEK: And will we meet here at 2 o'clock as well?

THE COURT: Yes.

MS. ZMROCZEK: Thank you.

THE COURT: All right.

We'll be in recess.

(A recess is taken.)

THE COURT: Are we ready for the jury?

MS. ZMROCZEK: Just two things, Your Honor. One, we would ask to sequester the witnesses.

And secondly, Your Honor, the codefendant's attorney is here. It's my understanding that the

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codefendant is under subpoena but fully intends to invoke her Fifth Amendment right. And so -- I don't think that we do that in front of the jury. She is extremely mentally ill, Your Honor. And I'm told that -- the co-defendant's public defender, Mr. Forney, that I would ask if the Court could inquire if she needs to stay for the duration of the trial since she does not intend to testify or if that could be addressed ahead of time.

THE COURT: Mr. Scott --

You want to sequester Mr. Forney or --

MS. ZMROCZEK: No, no. I'm certainly not sequestering him. He's not a witness in the case. But I -- I -- he just asked if I would ask if she needed to remain under subpoena and be here all week. She does not live here. She lives in Charleston.

THE COURT: Where -- where is she?

MR. WHITMIRE: She's downstairs, Your Honor.

THE COURT: She's not here anyway.

MS. ZMROCZEK: She's here in the courthouse.

MR. WHITMIRE: She gave a statement to law enforcement, Your Honor, implicating the defendant. I intended to call her at trial.

Perhaps the Court may want to ask her her intent outside the presence of the jury. Because assuming she says, "I'm not playing along," I'm saying, "We're setting you for trial next." So I'd like that to be on the record. So we're here in this same courtroom trying her case.

THE COURT: To me, that's a -- to me, that's a side issue to this trial. We have a jury that I told to come back at 2:45.

MR. WHITMIRE: I'm ready to go. This is Mr. Forney -- this is his request through Ms. Zmroczek.

THE COURT: Well, he's not in this trial. So we're not going to deal with that.

MS. ZMROCZEK: Okay. Thank you, Your Honor.

THE COURT: Anything else?

MR. SCOTT: Nothing from the state. We're ready to go, Your Honor.

THE COURT: Bring the jury.

MR. SCOTT: Judge, if I could just real quick, I think we may have agreed -- stipulated to these exhibits.

MS. ZMROCZEK: Just the pictures.

MR. SCOTT: Just the pictures, yes. We've agreed to stipulate to State's 1 through 32.

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THE COURT: Is that right?

MS. ZMROCZEK: That's correct, Your Honor.

THE COURT: Okay.

(State Exhibit Nos. 1 through 32 are marked for identification and admitted into the record.)

(The jury enters the courtroom at 2:53 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right.

Welcome back, ladies and gentlemen. If you-all will stand to be sworn.

THE CLERK: Would you please raise your right hand?

Do you swear or affirm that you shall well and truly try and true deliverance make between the State of South Carolina and the defendant at bar whom you shall have and charge a true verdict given according to the law and the evidence, so help you God?

(The jurors respond.)

THE CLERK: Thank you. You can have a seat.

THE COURT: All right.

Ladies and gentlemen, you-all have been selected and now sworn to be the jury in the trial of this case. And after you are selected to hear a case, you're not allowed to discuss the case at

all with each other or with anyone else. And you're not allowed to do anything additional as far as outside research. Anything that you will need to know about this case shall be here in the courtroom.

After hearing all of the witnesses, testimony, and arguments of other lawyers, and instructions of law, you will be asked to deliberate and to decide whether the defendant is guilty or not guilty of attempted murder and kidnapping.

As I stated a little earlier, the defendant is presumably not guilty. The state has the burden of proving him guilty beyond a reasonable doubt. And that is the purpose of a trial, to determine if the state can meet that burden.

So your job as jurors is to sit, pay attention, focus on the testimony and the evidence. So that at the end of the case, you'll be in a position to deliberate and to participate in the deliberations concerning whether Mr. Dixon is guilty or not guilty.

Later in the process, I will appoint one of you to serve as foreperson of the jury. That person will be the spokesperson for the jury.

They will have the responsibility of presiding over the jury deliberations and completing the verdict forms indicating the unanimous verdict of the jury.

We now move to opening statements, first by the state.

Mr. Whitmire.

MR. WHITMIRE: August 7, 2019, then-41-year-old Antrone Dubose was struck in the head with a tire iron, thrown into the trunk of his own car, and driven by his two captors throughout Columbia. He laid helpless, trapped in the trunk in a panic as his two captors, Defendant Martin Dixon and Mr. Dixon's female companion, Michelle Jones, drove Antrone through the greater area of Columbia finding ways to end his life.

The evidence and testimony of this trial will show this is not a whodunit. Y'all will get a chance to hear from Antrone. Antrone is from Charleston. In the days leading up to this incident, he drove to Columbia with his friend -- former friend, Martin Dixon and Ms. Jones. All goes well until Mr. Dixon assaulted Antrone, abducted him, and attempted to end his life.

Antrone will tell you-all about how Martin

Dixon hit him in the head with a tire iron and threw him in the trunk. Drove to the Elmwood Cemetery in the darkness of night. Once they arrived at the cemetery, his two captors got out of the car and lit the gas can of Antrone's Lexis on fire. However, the evidence will show the Antrone made it. The fire never permeated the trunk area compartment of the car.

You will get a chance to hear from Freddie Free. He was the caretaker of the Elmwood Cemetery. Mr. Free started his workday and he noticed a Lexis with some burn damage on it. He also noticed what appeared to be something moving in the trunk of the car. He immediately notified law enforcement and reportedly observed.

Y'all will also get to hear from Officer Dwyer of the Columbia Police Department. He was the first responder on the scene. He assessed the situation. He was able to discover Antrone's body lying in the trunk and placed in the back of the car. He coordinated with the fire department to have it removed through the Jaws of Life. He remained on the scene, worked with investigations to set a perimeter and process evidence.

Y'all hear from Crime Scene Investigator

Potash with the Columbia Police Department. He photographed and documented the evidence at the scene. He will tell you all about finding paperwork belonging to the defendant Martin Dixon in Antrone's car and Michelle Jones.

I keep talking about Michelle Jones. She's the codefendant in this case. She's been charged accordingly for her conduct. She will be exercising the right to a jury trial at a later date. But today, we are here for the trial of Antrone Jones -- sorry -- of Martin Dixon.

You will also get to hear from lead investigator Wayne Montgomery who ran point on this case and put the evidence together. He ultimately detained and arrested Defendant Martin Dixon and Michelle Jones in Hickory, North Carolina, sometime after this incident.

And at the end of this trial, we'll have another chance to speak to y'all, to talk about the law in this case, the law of attempted murder, the law of kidnapping and how it applies to the evidence you see from the witness stand and testimony you hear from the witness stand. But today is really not the day to do that.

However, I want to talk about this term

"beyond a reasonable doubt" or "proof beyond a reasonable doubt." Because you're going to be hearing a lot about that going forward. I will tell you kind of what it is and what it isn't. Proof beyond a reasonable doubt isn't proof beyond all doubt. It isn't proof beyond any doubt.

I submit to you, ladies and gentlemen, there's very few things in this world that we can know with a hundred percent certainty. Proof beyond a reasonable doubt is the type of proof that leaves you firmly convinced of a defendant's guilt.

Now before I sit down, I want to remind you-all of this: This isn't *Court TV*. This isn't *Law and Order*. This really happened approximately five blocks and a little over a mile away from this very courthouse in the Elmwood Cemetery right off of 126.

At the end of this trial, we're going to ask that y'all deliberate and find Martin Dixon guilty of kidnapping and attempted murder. Thank you.

THE COURT: Ms. Zmroczek.

MS. ZMROCZEK: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. ZMROCZEK: Counsel.

Good afternoon. Competent, credible evidence is not what you're going to see in this case. Our justice system is one of the most important areas of -- of -- of why we're here in this country, of why we are here and free, is because Mr. Dixon's presumed innocent as -- as Judge Newman told you. And he is presumed innocent all the way through and including into that jury room until the state has the burden to prove his guilt beyond a reasonable doubt.

There is a reason that they mentioned beyond a reasonable doubt in their opening. Because as you sit here and you listen to the evidence in this trial, you're going to be tasked with answering that question. Is that what happened? Has it been proved beyond a reasonable doubt? Did the state take the time in this important case to make sure that they just didn't make an arrest off of what Mr. Dubose told them in the hospital because he owed Ms. Jones $400 that he didn't want to pay or couldn't pay? And so he thought he would just put it on his two friends.

Surely, the state took those fingerprints out of the car and that blood and the DNA and so we

have all of that credible evidence to -- to convict Mr. Dixon. That's the things that you need to be looking for. You need to be looking for not just one story, but when they're questioned -- and ask did they consider anything else.

You're going to hear from the fancy fire department gentleman who comes up here and you're going to hear from all of these witnesses. And then you're going to ask yourself: Is there any other thing that could have happened?

Sure, they arrested two people. Whose fingerprints were on all of these items? Who actually did this crime? Did anybody do this crime? Did Mr. Dubose know he wasn't ever going to pay his friend Michelle Jones back and make sure that she wasn't going to get money and then get arrested? These aren't unreasonable questions.

The reason that your job is so important is because you get to decide the facts and you get to hold the state to that burden. It shouldn't be a very long trial sadly because there's not a lot of evidence.

Ladies and gentlemen, we did our

investigation of you through this morning and this afternoon asking y'all questions this morning, finding out where you work, seeing if you had biases, seeing if there is a reason that you wanted to -- to be on this jury or maybe shouldn't be on this jury. You -- you heard some of your former colleague say, "I don't think that I could be fair." And so those people were set aside.

And just like our investigation in picking 14, and the ultimate 12 jurors that are going to make the decision in this case, we're not asking anything more than that of the Columbia Police Department.

Ladies and gentlemen, I think you'll find at the end of this case that there is not proof beyond a reasonable doubt and you will be confident in your verdict of not guilty. Thank you.

THE COURT: Call your first witness.

MR. SCOTT: The state calls Freddie Free.

THE BAILIFF: Come forward and be sworn. Come on down. Place your left hand on the Bible. Raise your right. Face the clerk there.

THE CLERK: State your full name, please.

THE WITNESS: Freddie Douglas Free.

THE CLERK: Spell your last name, please.

THE WITNESS: F-r-e-e.

THE CLERK: Do you solemnly swear that the testimony you're about to give in this case be the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: You can have a seat right there. Thank you.

THE BAILIFF: Watch your step up. Watch your step up. Now what you need to do is talk loud enough through that class where she can hear you because she's got to take down everything you say.

THE WITNESS: All right.

THE BAILIFF: And loud enough for the judge to hear you.

THE WITNESS: Okay.

FREDDIE FREE

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Mr. Free, do you remember August 7, 2019?

A I do.

Q You do? And what were you doing that morning?

A We was down there to cut the grass at the cemetery. We was down there the day before and was going back the second day to finish up.

Q Okay. Is that -- is that what you do for a living --

A Yes.

Q -- landscaping?

A It is.

Q And I've been calling the whole area Elmwood Cemetery. But you told me something today. It's three separate cemeteries --

A It is.

Q -- right there. And I guess if we're coming down Elmwood towards 126, what would be the first cemetery?

A The first cemetery is a Catholic cemetery. And the second one is Elmwood Cemetery. And the last one, which is very last, is Randolph Cemetery.

Q Okay. And then you keep -- if you keep going, there's a river right down there?

A It's woods -- woods then a river.

Q Okay. On the morning of August 7, 2019, you were performing landscape work on which one of those three?

A Randolph.

Q Randolph. Okay. So the last one?
A Yes.
Q And again, if we're coming down Elmwood, how do we get to Randolph Cemetery? Because Elmwood kind of just runs into 126?
A Yes. If you go down Elmwood, just before you go across the bridge, you have to bear to the right and go beside the bridge. And that will run you into the three cemeteries.
Q It's kind of a little hidden frontage road down in there?
A Yes.
Q Okay. So that particular morning, August 7, you remember the weather that particular day?
A It was hot.
Q Okay. As is common in Columbia in early August?
A Yes.
Q And so you remember about what time you got out there at the cemetery that morning?
A Around 8:30, between 8:30 and a quarter to nine.
Q Okay. And what was your initial observation when you get there?
A Well, when I was approaching the cemetery, I

can already see my brother, who has a long trailer, that was already down to where the car was -- was parked. And he has to go in that particular driveway. And I could see my son walking around the car, looking to see if anybody was in it.

But I went through the first driveway. And I approached the first driveway from up the hill. And I parked across from where the car was parked. And by the time I got out of the car, I -- I decided to call the 911 just to get the police down there because we needed to get into the cemetery from that area.

Q Okay. So but what you're saying is there was a car there that was blocking the road. You couldn't get your equipment in. Is that what you're saying?

A That's correct.

Q And what do you remember about the car?

A It was just parked at the end of that driveway, the second driveway. I -- I hadn't got close enough to it to see anything that was wrong with it. It was just a car parked there.

Q Okay. Let's see.

All right.

So this is State's No. 1. It's already been admitted into evidence. Do you recognize what we are looking at here?

A Yes. That's the Randolph Cemetery.

Q Okay. And here we are right now as we sit in court somewhere back over here Downtown Columbia. This would be looking from a bird's-eye view looking 126 towards downtown Columbia; is that right?

A Correct.

Q And approximately where was the car?

A The car was at the bottom. Right there.

Q This little curve right here?

A Yes.

Q So I think you said there were two entrances?

A That's the first entrance.

Q Is this the one you went in, the first one?

A That's -- that's the entrance that I went into.

Q The way you described it, your brother is trying to get in this entrance and then you can't get past it because it's blocked?

A Correct.

Q The car's there. And so what else did you observe about the car?

A That was basically it right there until I got -- started walking towards the car. And I was calling the 911 -- 911 operator just to get a police down there to move the car. Because the first thing I

thought that the car might have been stolen.

Q Okay. But -- but -- so you go ahead and call 911?

A I call 911 and just tell her that it's a car down here parked. I gave her a description of the car. And as I was talking to her, she was asking me about the car --

MS. ZMROCZEK: Objection, Your Honor.

THE COURT: Basis for the objection?

MS. ZMROCZEK: Hearsay.

THE COURT: What do you say, Mr. Scott?

MR. SCOTT: I don't think -- we're not offering it for any truth of the matter asserted. He's just talking about calling dispatch.

THE COURT: All right.

Overrule the objection.

BY MR. SCOTT:

Q So as you're talking with dispatch, what do you observe with the car?

A When I was walking towards the car, I could see that it was a burnt mark on the side of the car. And that's when I told her that it looked like someone had tried to set the car on fire. She said, "Well, is it on fire?

I said, "Well, no, it's not on fire." I

said, "But it looked like someone had tried to set it on fire."

And while I was talking to her, I thought I saw the car shake one time.

Q Okay.

A And then I told her, I said, "I think I saw -- I think I saw the car shake."

She said, "You sure?"

I said, "I'm pretty sure."

Q Okay. But you -- you didn't see anybody in that car --

A No.

Q -- but you see it moving?

A No. No. Couldn't see anybody in the car.

Q What did that lead you to believe when you couldn't see anybody in the car but you could see it shaking?

A Say -- say it again?

Q What did that lead you to believe when you couldn't see anybody in the car but you could see the car moving?

A The first thing I thought it had to be somebody in the -- inside the car or either in the trunk of the car. That's the only thing I could think of.

Q Show you State's No. 7. You can see that picture up there that's got a seven on it?

A Yes.

Q Is that what you were talking about that you observe the --

A That's correct.

Q Okay. And what's that other? Is it eight? Is that the other one I handed you?

A Eight.

Q What does eight depict?

A That's the same burnt mark on the side of the car where the gas tank is located.

Q Okay. So you -- you did call 911?

A I did call 911.

Q This is pre-marked State's No. 38. What is this?

A That's a disk with my initials on it.

Q Okay. What does it contain?

A The 911 call.

Q Okay. Is that your voice on there, describing what you observed on that particular morning?

A It is. It is.

MS. ZMROCZEK: No objection, Your Honor.

THE COURT: Is that admitted?

MR. SCOTT: State calls for State's No. 38 for admission, Your Honor.

(State's Exhibit No. 38 is admitted into the record.)

(State's Exhibit No. 38 is played.)

BY MR. SCOTT:

Q All right.

This is the -- State's No. 3, is that the black Lexus that you saw?

A It is.

Q And were the doors open like that when you saw it?

A No.

Q No. Okay. Were you there when law enforcement arrived --

A Yes.

Q -- and they were looking in the car?

A Yes.

Q And did you ever see how they were able to get to the person that was in the trunk?

A They had to rip the trunk off.

Q They had to tear the trunk off?

A Yes.

Q And -- okay. You were just kind of watching from a distance as they rescued the person?

A I was, yes.

Q Okay. All right.

That's pretty much your entire involvement, isn't it?

A It is.

Q All right.

Just a hot day and a black car that was blocking your pathway?

A Yeah.

Q And then, of course, you begin seeing it shaking while you were speaking with law enforcement?

A Yes.

Q And I heard her ask can you -- are you able to communicate with the person in the car?

A Uh-huh.

Q And I heard you on the 911 asking the person inside the car if they needed help. Did you get any answer?

A No answer.

Q Okay. No noises or anything?

A Nothing.

Q All right.

Mr. Free, answer any questions Ms. Zmroczek has for you, please.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good afternoon, Mr. Free.

A Good afternoon.

Q How are you doing?

A Good.

Q Good. You worked -- so you do ground maintenance?

A Yes.

Q Okay. So you do that -- you don't just do that exclusively for cemeteries, do you?

A No.

Q So you -- you go to different locations to do that?

A Correct.

Q So you -- and one of your locations is -- is --

A The cemetery.

Q All three of them?

A No. Just Randolph.

Q Just the Randolph Cemetery. So -- and I know that there -- you said -- this was -- I'm mentioning Defendant's [sic] 1, that the vehicle was located back here; is that correct?

A That's correct.

Q In order to get into Randolph Cemetery --

well, let me ask you this: How do you get into -- is there one entrance into the main cemetery and then it branches off to the three? How does that work?

A To all three cemeteries?

Q Yes.

A There's only one entrance that -- Frontage Road, that comes all that way down.

Q So way down -- way down -- further away from where you were --

A Right.

Q -- is where the main entrance is, right?

A Yes.

Q And so you have to go through that main entrance to get to the other location?

A That's correct.

Q And how long have you been doing maintenance at the cemetery?

A Twelve years.

Q Twelve years?

A Yes.

Q And how often do you go?

A Every two weeks.

Q Okay. So you hadn't been there two weeks prior to this?

A We had been there two weeks prior to that,

yes.

Q Right. Right. Two weeks. Poorly-asked question. Two weeks -- you hadn't been there since two weeks prior to that date?

A No.

Q And so one of the things that you notice when you are at the cemetery is, unfortunately, it's a popular location for homeless people, is it not?

A It is.

Q They -- they leave their stuff there?

A They do.

Q They stay there?

A Oh, yes.

Q A lot of them, right?

A Well, not as many as it used to be.

Q Used to be a lot?

A Yes.

Q But they started to try to put cameras up and patrol, right?

A I'm not sure about the cameras.

Q Okay?

A I'm not sure. But they do patrol.

Q They do patrol. Right? And -- and in fact, I think there's a bridge like right under here that also has a large homeless population as well; is that

right?

A Under the railroad tracks.

Q Right close to the cemetery, correct?

A Yes, that's correct.

Q In fact, I think that day, in addition to seeing on the car, like right over to the side, there were a bunch of stuff that didn't belong to the cemetery, clothes, bag, trash, etc.?

A Yes.

Q And that's something that you see often?

A That's correct.

Q Okay. I believe those are all the questions I had for you. Thank you very much.

A You're welcome.

MR. SCOTT: Nothing from the state, Your Honor.

THE COURT: Thank you, Mr. Free.

THE BAILIFF: Watch your step down, sir. Take your time and step down.

THE COURT: Next witness.

MR. SCOTT: Your Honor, the state calls Joseph Dwyer.

THE BAILIFF: Come forward to be sworn, please. Good afternoon. Place your left hand on the Bible. Raise your right. Face the clerk for

me.

THE CLERK: State your full name, please.

THE WITNESS: Joseph Dwyer.

THE CLERK: Spell your last name, please.

THE WITNESS: D-w-y-e-r.

THE CLERK: Do you solemnly swear the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat.

JOSEPH DWYER

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Okay. Officer Dwyer, where are you employed?

A City of Columbia Police Department.

Q Okay. How long have you worked there?

A Seven years, just a little bit over seven years.

Q Okay. You remember August 7, 2019, specifically that morning?

A I do.

Q Okay. And did you have an opportunity to respond to a call at Randolph Cemetery?

A I did.

Q Okay. And what was the -- what was the call for service? What was the reason for going?

A The call for service came out as a suspicious vehicle or abandoned vehicle in the cemetery that looked like it was on fire. We were -- I responded to the Elmwood area.

Q All right.

So you got there relatively quick, I assume?

A Within minutes, yeah.

Q And what were your observations when you got there? Did you speak with Freddie Free? Do you remember a maintenance --

A Oh, yeah. He was doing the -- service in the cemetery. I guess the field and beautification of the cemetery.

Q Okay. And did he direct you to the suspicious vehicle?

A I was -- I already observed the vehicle but spoke with him briefly after I was around the vehicle while we were conducting, I guess, police business.

Q Okay. And what were your observations as far as the vehicle was concerned?

A When I first arrived on the scene, I observed the vehicle was not involved -- it didn't have a fire

at the time, but it was freshly, I guess, attempted to. Because the fuel tank had been ajar and there was burned or charred material protruding from the gas tank. And there was also charring that was running down the side of the vehicle. I also observed charred material in the backseat area of the vehicle.

Q Okay. Let me just show you a couple of pictures here. This is State's No. 7. Is that what you observed as far as the gas tank you're talking about?

A It is.

Q And then, State's 8, that, too, is what you observed?

A It is.

Q And what were you -- what was this object here at the top of State's No. 8?

A It seemed to be at the time, I guess to my recollection, it was charred material. Maybe cloth material or paper.

Q Okay.

A It's hard to tell. When certain cloth or fabric burns, it can have the same consistency as burnt paper.

Q State's No. 10, is that just another angle of the gas tank as you observed it?

A It is.

Q Okay. State's 11.

Okay. And then, you said you noticed some charred material inside the vehicle as well?

A In the rear passenger compartment, yes.

Q I'm going to show you No. 12. Is that what you're talking about? What is that?

A Looked like that was the charred material on the backseat. It's remnants of paperlike material. It could have been certain fabric.

Q Okay. State's No. 26, is that what you observed?

A That is also more of the same.

Q State's No. 27 and 28?

A (Reviews document.)

Q Okay. You said -- what are we looking at? This is what seat of the car?

A That would be the passenger compartment of the vehicle. That would be towards the front.

Q Front passenger? And what are we looking at? The floorboard of the front passenger?

A That would -- that would be some of the charred material that was lit on fire and placed in the vehicle.

Q Okay. Do you recall seeing this item here as

well?

A I did.

Q Did or did not?

A I -- I observed there being items in the vehicle. I just, at the time, wasn't fully aware of the relation to the vehicle itself.

Q Okay. Did you -- did you see that tire iron?

A I did, yeah.

Q Okay. What about this? Did you see this in State's No. 5? Do you remember observing that?

A As far as this item, I -- I do not recall at this time if I actually observed that in the moment or on the scene.

Q Okay. This is State's No. 27. This is what seat of the car?

A That's the driver's seat.

Q And what -- did you observe this?

A I did observe that.

Q And what was this? What was wrong with this?

A That is further wadded-up paper material, charred wadded-up paper material. It was as if they were attempting to wad it up and place it in the vehicle.

Q Was it evidence to you that it had been --

A It -- it did. It -- I saw small -- small

marks of charring.

Q Okay. While you -- at what point did you become aware that there was somebody in the trunk of the vehicle?

A While I was investigating the vehicle itself and seeing the odd circumstances of there being burned material inside the vehicle, I also had the unfortunate experience in the past with a very similar incident of there being an individual placed in the trunk of a car. So I was very aware of that circumstance being a reality. With the material inside the -- I guess, the interior of the vehicle, the compartments, in order to ensure that there wasn't some situation of there being somebody in the back, but I also observed what seemed to be at the time some type of dried -- recently dried fluid, I guess, would be consistent, or colorization of possible blood or something like that.

I also could hear possibly something in the interior of the trunk. But the trunk, I was unable to actually open because of the electrical system being out. But I did -- I guess all of those observed facts at the time led me to believe there potentially could have been a victim in a trunk of the car.

Q Explain again. Like did -- did -- a lot of cars at the driver's seat just to the bottom of it is

there's usually a latch to pop the trunk?

A Yeah. There would be a switch. Or usually, it's an electrical switch that you can use to deactivate the locking mechanism of the trunk to open it. In this circumstance, it did not work.

Q Okay. So you were unable to get the --

A The trunk open, no.

Q -- trunk open?

A But I was able to look into the trunk, peer into the trunk compartment through a cargo access port in the rear seat area that's in between the two passenger seats.

Q What did you observe?

A Once I opened the armrest and pulled down the plastic -- it was fairly dark in there, but I was able to use a flashlight to see. That's where I observed what looked to be like a person in the trunk. But the person was also still breathing and made several noises, no actual articulable words, but groans and moans when I called out to him to see if he was conscious or aware of his surroundings.

Q Okay. Do you -- do you recall the temperature that day or?

A I believe it was warm, fairly warm. Not quite South Carolina summer temperature, but it was

fairly warm.

Q Okay. And you could see somebody in the -- from the back. So what -- what are you describing? Like you could remove a panel from the backseat in order to look into the trunk?

A So in a lot of sedans, I -- I believe more so the older ones. I'm sure there are still some now. In a lot of your sedans, you have the passenger to seats and you've got a center console that actually can fold down as an armrest. There's generally a plastic cargo access port that's covered by a plastic piece that you can pull down that will collapse on top of the armrest. Usually, you'll see some type of, like, beverage holder of something like that, or cup holder.

Q Okay. You said you called out to the person and no verbal response.

A There was no -- no actual articulable verbal response. There was this kind of groan.

Q Okay. But you were able to tell that the person was still breathing?

A Yes, sir.

Q Okay. So what did you do next?

A At that time, EMS and Fire were notified to respond. EMS responded first.

Q Okay. And how -- how'd y'all get into the

trunk eventually?

A EMS responded. That was -- in this circumstance, got there first. We were unable to find any type of items to try to pry the trunk open due to the exigency of the circumstance.

However, when Fire responded. They were able to do what would be considered a pop the trunk, I guess, or extrication of the trunk area, remove the trunk or the lid so that they could gain access.

Q Okay. Were you there when they were able to gain access to the trunk?

A I -- I was still on scene in relevance to perimeter while they were performing their duties.

Q This is State's No. 4. Were you able to see the trunk after they pulled the lid off of it?

A I did. I guess to view after he was removed to document the initial incident.

Q Okay. So this is what you observed inside the trunk?

A I did.

Q I don't -- was there a lot of room in that trunk with all the --

A There was not.

Q Okay. It looks like a spare tire being stored in the trunk.

All right. And you saw the individual after they pulled him out?

A I'm sorry. Could you repeat your question?

Q You saw the individual after they pulled him out of the trunk?

A I got a glimpse of him, yes.

Q And I guess the ambulance takes him to the hospital?

A Once he was extricated from the vehicle, he was transported by EMS.

Q Do you know this man right here?

A I do.

Q Who is that?

A That is the victim of the incident.

Q That's the guy who ultimately was pulled out of the car by the firefighters who used the Jaws of Life?

A It -- it is, yes. He had longer hair at the time, though.

Q Randolph Cemetery. What is that? Is that the County of Richland?

A It's -- it's still in the city limits of Columbia County, Richland. It's at the end of the Elmwood corridor.

Q City of Columbia, but it's still within

Richland County, right?

A It is.

Q Okay. Hold on one second. Let me make sure. Thanks, Officer Dwyer. Answer any questions Ms. Zmroczek has for you, please.

A Sure.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good afternoon.

A Good afternoon.

Q You said you worked -- you work currently for the City of Columbia?

A I do.

Q And are you -- were you on patrol that day? Was that your -- were -- are you part of the patrol unit?

A Yeah. I'm on patrol, Bureau of Patrol Operations for the North region.

Q Okay. And so you have a car? The city provide you a car for that?

A Yes, ma'am.

Q And what kind of equipment do they have in that car? Does it have dash cams?

A It does have dash cams and other recording devices.

Q Okay. Did you record any -- anything that day?

A I don't recall. I do believe I ran code. But it's also possible I may misremember on that certain aspect just because I was so close to it. I may have just responded immediately. But if I did utilize blue lights and camera, the camera would have recorded, yes.

Q Okay. But you -- it -- it would have been turned in, right?

A It's automatically uploaded in the system.

Q Right. And did you have a body-worn camera on?

A Yes. There was body-worn camera at the time.

Q And was that uploaded as well?

A It should have been. When I say "should," most definitely, it's always uploaded within a certain amount of time especially with so much time being passed from down.

Q And -- and so -- yes, it automatically gets uploaded, right?

A It's not automatic. It has to be manually offloaded onto a dock.

Q Okay. And so do you know the reason why none of those were ever turned over?

A We've made multiple changes to our body camera systems and programming from now and then, and also changes to our body camera systems and programming. From now and then, also changes to our reporting system and Coban systems altogether. There's also issues with some of the UI interfaces with our body camera system just due to the fact that Coban is an aging system with its program issues like any other computer, I think. So that's a possibility of what it is. That's the experiences I've had in the past.

Q Okay. You -- you said you were so close. Because that's really close to actual headquarters, right?

A It's -- it's -- it's probably about a mile or so from the actual police headquarters. I was at -- I was actually at a light near the Elmwood corridor. So I was within a mile.

Q And the -- sorry. Yeah, within a mile.

So when y'all get dispatched, that comes through on your radio like we see on the TV, right?

A Yes. It comes through dispatch on the radio.

Q And they tell you the locations to go to?

A They do.

Q And when you patrol, do you patrol -- like do you patrol -- are you, do you get the whole city or do

y'all break it down into little areas? How does that work?

A So the organization of patrol is broken up into regions, which are like precincts in most cities. The region is then divided by patrol officers based on staffing to deal with patrol areas that are assigned. However, calls for service could be, you know --

Q Anybody can respond?

A -- dispatched by proximity --

Q Okay.

A -- instead of actual patrol area.

Q So was that -- that Elmwood area somewhere where you're familiar with?

A Yes. I'm very familiar with Elmwood.

Q And you're familiar with that because you get and a lot of calls around that area; is that correct?

A We do. It's also one of my first patrol areas when I started with the --

Q And so sticks in your mind. And there are -- unfortunately, we have a large homeless population downtown; is that correct?

A Yes. There is a large --

Q Especially in that area --

A -- population.

Q -- in that area of Elmwood?

A Yes.

Q And you get a lot of calls for service?

A Yes. North region actually gets lots of calls for service, I guess throughout at this point.

Q Certainly. You -- you said that you could tell there was an attempt -- maybe like an attempt to set the car on fire. Was it hot? Was it smoking?

A I do not recall there being still active smoke at the time. There may have been briefly like when I first arrived. But the charring was definitely fresh.

Q Okay. And you -- also you said that you could see kind of -- when you went into the backseat, you could see into the back into the trunk area?

A You can.

Q But that -- you didn't alter that. It was like that already, right?

A I would have had to gain access to that. So it was up initially.

Q Okay.

A I had to remove that, yes.

Q All right.

So you altered that just to see if there was somebody in there?

A Yes.

Q And you also found a key, right?
A There was a key to the vehicle.
Q The key to the vehicle?
A Yes.
Q Was in the vehicle?
A Was still in the car, yes?
Q Okay. And you collected that, secured that?
A That was -- I tried to use that to open the trunk initially. But that was secured through the duration that I was there at the car.
Q Okay. And so you tried to -- to get it to work and it just wouldn't?
A There is no -- not -- what I recall, there was no -- I couldn't utilize any of the electrical system of the car at the time.
Q Okay. But the key was with the vehicle?
A It was with the vehicle, yes.
Q You said that you noticed there was dried liquid, you assumed it was dried blood?
A It had the consistency and color of -- potentially could have been dried blood, yes.
Q And that's something that you -- you -- as a first responder, you're trained to look for clues or for things to kind of point the investigative division or the crime scene analyst to -- to pay attention to,

right?

A Yes. Also to observe if there -- if it is a crime in any aspect or if it's just the car.

Q Because that can be important in a crime, right?

A Yes.

Q And also I know that you said you tried to use the button. But were you touching all aspects of the car with your finger?

A No.

Q And why not?

A Even if there is a situation of exigency, strive keep in mind or have an awareness of what it is you're going to touch --

Q Because you want to --

A -- or how to touch to preserve the --

Q Because you want to preserve the --

A -- scene as much as possible, yes.

Q Right. You want to preserve the evidence, right?

A Yes.

Q Especially in a car. Because a car is a -- is a good mechanism to get fingerprints off of, right?

A Yes, it can be.

Q Okay. And so you were very careful and

cognizant of that when you were touching the vehicle, right?

A To what I recall, yes.

Q And it was 8:48 in the morning? It was before 9 o'clock in the morning?

A Approximately.

Q Okay. And you -- so even though you don't write down on your reports, when you -- when dispatch says, "Hey, there's an incident at 300 Elmwood or at the cemetery," what do you then do to tell dispatch you're there?

A You would give your in-route response and arrival response depending on the circumstance. Sometimes you may leave out you have arrived just because you might have to fight somebody immediately. It just depends on the circumstance.

Q Right. And they -- the computer keeps track of all of that. So you don't have to remember the times, right?

A Correct.

Q If I told you it was before 9 a.m. according to the cab report, you wouldn't have any reason to dispute that?

A Not without looking at something in front of me, no.

Q Okay. And then after the investigators and just -- and EMS and Fire got there, you were cleared from the scene?

A Once EMS response, Fire responds, the victim was transported by EMS, we remain on the scene for the duration of the -- investigatory aspect and collection for perimeter and/or -- or you know, security at the scene.

Q Okay. And one problem that I think we talked about not just with the homeless people, but especially in the cemetery, they have a lot of homeless people that attend that area; is that correct?

A Certain times in the day. There may be some of the past, yes.

Q Not -- typically -- not there in the morning when it's bright daylight out?

A If there's any type of staff or personnel that's present, they usually will refrain from entering into the area because they know police are generally called soon after.

Q Right. And then they'll have to leave, correct?

A Correct.

Q But under the cover of night, it's certainly easier for them to be there, right?

A It would be easier. However, there is a pretty strong police presence patrol in that area just because of the overpass. And then there's an area nearby that's a homeless camp, as you will, or which -- whichever, I guess, term you would use. But it's a kind of tent area where they sleep in the woods near the river.

Q Okay. And in fact -- and they leave trash and clothes. You saw some of that out there that day, right?

A Not -- not in the immediate area of the vehicle. Further -- there -- there are certain areas that are dirty, I guess, because of the limitations of the beautification of the area. But there -- there wasn't -- not that I recall, a prevalent amount of trash or debris around the car.

Q Okay. But you -- they had crime scene come and take pictures of everything that was relevant, right?

A Yes.

Q Okay. And that wasn't your job?

A No.

Q Okay. Perfect.

A I -- I stick up tape and stand at that.

Q Excellent. I think those are all the

questions I have for you. Thank you.

A Yep.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Do you remember where in the car that key fob was?

A Say again the question.

Q The key fob that you talked about that was in the car. Do you remember where it was in the car?

A I believe it -- if I can recall, it may have been the driver area of the vehicle. I don't remember specifically where it was observed.

Q Is this your report. Let me know if that refreshes your memory.

A (Reviews document.)

This is my report. And I refer in the report states that key fob was located between the seat and door panel of the vehicle.

Q Okay. So --

A I did not recall that.

Q Was that the driver's seat?

A Yes. It would be the driver.

Q And so just to the left of the --

A Just to the left of the driver seat and the door panel.

Q All right. And it was -- it was not functioning?

A Not functioning.

Q Thank you, Officer Dwyer. I appreciate it.

MS. ZMROCZEK: Nothing further.

THE COURT: All right.

Thank you, sir.

THE BAILIFF: Watch your step down, sir.

MR. SCOTT: Officer -- or the state calls Columbia Fire Department, Chris Ford.

THE BAILIFF: Come forward and be sworn, sir. Place your left hand on the Bible, raise your right, and face the clerk there.

THE CLERK: State your full name, please.

THE WITNESS: Christopher Carl Ford.

THE CLERK: Spell your last name, please.

THE WITNESS: Ford, F-o-r-d.

THE CLERK: You solemnly swear the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Have a seat right there. Thank you.

THE BAILIFF: Watch your step up, sir. Step

up again. Okay.

CHRISTOPHER FORD

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Mr. Ford, were you able to go to the Randolph Cemetery on the morning of August 7, 2019?

A Yes, sir.

Q And what was the purpose of your agency responding to that cemetery?

A We were called out for possible -- someone trapped in the trunk of a car, for extrication purposes.

Q And what were your observations when you arrived on scene?

A It looked to be as if the vehicle was to be set on fire. And CPD had suspicion that there possibly was someone in the trunk of the car. As they probably tried, we tried just to manually open it when we got there. Failure to do so. So we had to use extrication tools to actually open it.

Q What was the -- I'm still trying to figure. What was the issue? The buttons weren't -- the latches weren't functioning?

A I'm not sure. I would assume so. But we --

everything we tried from manual manipulation, it wouldn't allow it to open. So we had to use extrication tools.

Q Okay. This is State's 10 and State's 16. What are we looking at there?

A Looks to be some type of burn matter on the side of the car near the fuel tank with the trunk lid removed.

And 16. The back door of the vehicle open in 16.

Also, in No. 10, it looks like a close-up of the burn matter on the side of the fuel tank.

Q Okay. That's what you yourself observed? The same pictures of the gas tank is what you yourself observed?

A Yes, sir.

Q And State's No. 5, did you observed this?

A I don't know if I paid attention to it or not at the time. I don't -- I don't recall, no, sir.

Q Okay. Tell me -- you said y'all had to use extraction methods -- well, let me ask you this real quick. Did you look inside the car? Did you observe anything inside that you recall?

A Very briefly. I think predominantly I was just one of the commanding officers on the scene. And

my guys were probably potentially looking for a way to open the car before we put tools in the car. And we were unsuccessful with that, so we chose to use extrication tools.

MS. ZMROCZEK: Your Honor, I'm having a little trouble hearing. I'm sorry.

THE WITNESS: I'm sorry. Can you hear me better now?

MS. ZMROCZEK: Yes. Thank you.

THE WITNESS: I was just one of the commanding officers on the scene. My guys were looking for a way to manually open the trunk. And we were not successful in that, so we chose to use extrication tools.

BY MR. SCOTT:

Q Okay. State's 28?

A Yeah. Looks like burn paper in the floor of the car.

Q Okay. That's on the interior of the car?

A Yes, sir.

Q And tell me what was the extraction methods you used to obtain entry?

A We have a set of cutters and spreaders. One obviously, as it says, it cuts, and one spreads just like a set of big tweezers, if you will. So actually

gained a purchase point and were able to spread the trunk far enough to be able to cut the trunk lid off of the car.

Q And what was inside?

A Human; a man.

Q Okay. All right.

Well, that was pretty much your agency involvement in the case to gain access to the trunk?

A Yes, sir.

Q And there was a person -- do you remember whether he was conscious or not?

A He was -- seemed to be in and out of consciousness, obviously in distress. He looked very labored, very tired, obviously upset. But that was the gist of my memory.

Q Okay. Thank you.

Please answer any questions Ms. Zmroczek has for you.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Is it officer or?

A Captain.

Q Captain Ford. Sorry. So y'all do reports, right?

A We do. Yes, ma'am. I was not the reporting

officer --

Q Okay.

A -- for this particular.

Q In fact, you weren't listed on the report at all, were you?

A I think I was. Possibly -- I don't know if I -- maybe my unit was listed on there, probably Ladder 7 was one of the units.

Q And that's fine. So it's not just one -- when a fire --

A It is not. We -- so depending on how the call is coded, it gets a certain response. So we received that call as an entrapment. So that dictates an engine company, ladder company, rescue, and battalion chief.

Q Okay. So you did not receive that call for fire?

A We did not. It was a special request from CPD initiall. And like I said, with suspicion -- from what I can remember, suspicion of someone possibly trapped in the trunk of a car.

Q Okay. And when you got there, do you recall anything about asked -- being asked to investigate about the fire?

A No, ma'am.

Q Certainly you have training and able to do that, right?

A Absolutely.

Q You have arson investigators?

A No. We have somewhat of an understanding background in arson. So we -- we know what signs and stuff to look for. But we are not -- that is handled by our fire marshal's office predominantly.

Q Okay. And you also said that basically y'all's job was to -- to open the trunk?

A That's correct. Yes, ma'am.

Q A lot of times y'all do that in -- in automobile accident as well?

A We do. A lot of times during the -- even -- not specifically, but a normal car fire, engine companies will check all voided areas of the car just to make for any type of extension of fire. And they are trained to open the trunk regardless.

Q Okay. And had you tried -- did they tell you that they had a key? Did you try to open the vehicle?

A I personally did not. Like I said, I was one of the commanding officers. My guys looked for multiple different ways to manually open the trunk. And I was told that they were unsuccessful with doing so. And just with the severity of the case and

potentially someone being trapped in the trunk, I didn't want to wait any longer. So we decided to use extrication tools, which was the fastest method.

Q Sure. And -- and in fact, you were able to do that relatively quickly too, right?

A Yes, ma'am.

Q I think y'all on your reports, you keep information such as what time you were dispatched?

A Yes, ma'am. Most of the time, it was time stamped. Like I said, I was not the reporting officer on this particular unit. I was especially a secondary unit. But it was relatively quick, yes.

Q And -- and -- and even though you didn't do the report, as the captain, this is -- this is something that --

A Yes, that's --

Q -- a note goes on the report?

A Yes, that's correct. Yes, ma'am.

Q So if the report says arrival 9:14:11, that would be in the morning?

A That's correct. Yes, ma'am.

Q And then if it says last unit cleared 9:33:09, what would that mean?

A That would still be in the a.m. That's 9:39 in the morning.

Q And last unit cleared means y'all were --

A That would be last --

Q Cleared and --

A That would be the last CFD unit, the last that they needed assistance from us would be at 9:39. Yes.

Q Thank you.

A Yes, ma'am.

Q I have no further questions.

A Yes, ma'am.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Okay. Well, did you observe -- did you observe signs of arson?

A Did I observe? It looked to be yes, that something was set on fire, yes. The one in, I guess, Exhibit 15 or 16 where I seen the burn matter on the car, it looked to be that someone potentially tried to set the car on fire, yes.

Q Okay. And when you see State's 28, the burn material that was in the floor in the interior --

A Right. Something obviously someone had set that on fire as well.

Q And then you see the rag hanging out of the gas tank?

A Right.

Q That was a sign of what?

A Of arson.

Q And so clearly, gasoline is an accelerant, right?

A Right.

Q Do you know of any safety features that car manufacturers may implement to keep --

A I am not an expert om whether it would or wouldn't. I mean it's the trifecta. You need air, fuel -- heat source, air, and an ignition source to be able to create fire. Now, if it can't get one of the three, then fire will not burn.

Q Okay. If it's not getting the proper amount of oxygen --

A That's correct.

Q All right. Thank you.

MS. ZMROCZEK: Just very briefly on that.

RECROSS EXAMINATION

BY MS. ZMROCZEK:

Q So it wasn't referred to anyone to investigate for arson?

A Not -- not for me, no.

Q And the car was not on fire?

A It -- when we arrived, it was not.

Q Thank you. That's all.

THE COURT: Thank you, sir.

THE BAILIFF: All right. Watch your step.

THE COURT: We'll give y'all a few minutes break while we have the next witness come in. If you'll go to the jury room for a few minutes.

Please do not discuss the case.

(The jury exits the courtroom at 3:56 p.m.)

THE COURT: We'll take five minutes or so.

(A recess is taken.)

THE COURT: Bring the jury.

(The jury enters the courtroom at 4:11 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right. Very well.

Your next witness.

MR. SCOTT: Antrone Dubose.

THE BAILIFF: Come forward, sir, to be sworn. Place your left hand on the Bible. Raise your right. Face the clerk for me.

THE CLERK: Will you state your full name, please?

THE WITNESS: Antrone Dubose.

THE CLERK: Would you spell your first name, please.

THE WITNESS: A-n-t-r-o-n-e.

THE CLERK: Do you solemnly swear the testimony you are about to give in this case to be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I swear.

THE CLERK: Have a seat right there. Thank you.

THE BAILIFF: Watch your step up, sir. Step up there. And speak into that microphone where everybody can hear you, okay?

ANTRONE DUBOSE

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Antrone, how old are you?

A 44.

Q And where --

MS. ZMROCZEK: Your Honor, I cannot hear.

THE BAILIFF: Speak into the microphone.

BY MR. SCOTT:

Q Speak up a little bit.

How old are you?

A 44.

THE COURT: It's about the same. Push up some.

THE BAILIFF: Okay. Now speak into the microphone. No. Don't rear back. Don't -- don't -- don't rear back from the mic. Stay into the mic. Now say something.

THE WITNESS: Hello.

BY MR. SCOTT:

Q How old are you?

A 44.

Q Okay.

THE BAILIFF: You've got to stay up on the mic.

BY MR. SCOTT:

Q Okay. Antrone, where are you from?

A Charleston.

Q You got to --

A Charleston.

Q Okay. Do you have a disability?

A Yes, sir.

Q What is your disability?

A I have to say it?

MS. ZMROCZEK: Your Honor, may we approach? I've got a matter of law that I need to discuss outside the presence of the jury.

THE COURT: Okay.

MS. ZMROCZEK: Or we can approach.

THE COURT: Okay.

(Sidebar conference is held off the record.)

BY MS. ZMROCZEK:

Q Speak up. You've got to speak louder than you normally do. Are you comfortable just sharing -- what is your disability?

A I --

Q Did you -- did you graduate high school?

A Yes, I did.

Q Okay. And can you read and write?

A Yes, I do.

Q Okay. But you were special education all through school; is that right?

A All through school. Yes, sir.

Q Okay. And do you receive a social security check?

A Yes, sir.

Q And you get a check every month for your disability?

A Yes, sir.

Q And are you employed?

A No, sir.

Q Have you ever been employed?

A Yes, sir.

Q What did you do when you were employed?

A At that time --

MS. ZMROCZEK: Your Honor, I can't -- I'm so sorry. I just cannot hear when he's testifying.

THE COURT: Why don't you come and stand a little closer?

MS. ZMROCZEK: Thank you.

BY MR. SCOTT:

Q Antrone, where did you work when you were working?

A I was working at the car dealership.

Q A car dealership?

A Yes.

Q Okay. And where was that?

A In Charleston.

Q And what was your -- what was your job there?

A Overnight security.

Q Overnight security?

A Yeah.

Q Okay. You have -- you had a driver's license at one point, did you not?

A I did.

Q Okay. And what kind of car did you have?

A I had a black Lexus.

Q A black Lexus. Okay. Do you remember what year that was?

A '07.
Q Okay. It was a 2007 model black Lexus?
A Yes.
Q Okay. And how were you able to buy that car?
A Actually, my boss bought it for me.
Q It was given to you?
A My bossman, yes, sir.
Q The boss who ran the car dealership?
A Yes, sir.
Q Okay. And you were able to drive the car?
A Yes, sir.
Q Okay. When was the last time you worked?
A The last time I worked? I worked in 2020.
Q Say it again.
A I worked in 2020.
Q Okay. Is that the car dealership?
A (No audible response.)
Q Where was that?
A I worked at Ruby Tuesday. Then I came back to Charleston and went -- went back to that car lot. In 2020, and then I've been working at Burger King to.
Q Okay. Ruby Tuesday, the car --
A In Summerville.
Q -- dealership, and Burger King? Okay. And do you have a learning disability?

A Yes, I do.

Q Okay. And I don't -- I don't mean to make you uncomfortable.

Back in 2019, August 2019, where were you living at the time?

A I was at the car dealership. But then, I got let go.

Q Okay. Where were you living?

A I was sleeping inside my car.

Q Okay. You were largely homeless back in 2019?

A (No audible response.)

Q Okay. And how did you meet this man right here?

A We was roommate before.

Q Okay. Y'all used to live together?

A Yes.

Q And where -- where did y'all live?

A On Ashley Phosphate in North Charleston.

Q Okay. And the two of you, were you friends at that time?

A Yes.

Q Was it boyfriends together or just friends?

A Friends.

Q But you two lived in the same -- was it an

apartment or a house?

A Yes. Apartment.

Q Apartment. And that was in Charleston?

A Yes.

Q But at some point, y'all stopped living together?

A Yes.

Q In August 2019, what was your relationship with him at that time?

A We -- we became friends again.

Q You -- you became friends again. Is that what you said?

A Yes.

Q I'm sorry?

A We became friends again.

Q Okay. What kind of things did you like to do together? Was he -- was he homeless, too, at the time? Or did he live somewhere?

A He live somewhere. He was staying up here in Columbia.

Q He was staying up here in Columbia? Is that right? What you said?

A I came -- I came -- I came up here and got him and take him back down to Charleston.

Q All right.

How did you know to come up here to get him?

A He told me where he was going to be at.

Q Okay. So you drove up from Charleston?

A To Lexington, South Carolina.

Q Okay. And why -- why did he ask you to drive him? Did he have a car at the time?

A He say he did, but I ain't seen it.

Q You never saw him with a car? And do you remember why he asked you to take him from Columbia back down to Charleston?

A No.

Q You don't remember why?

A I came -- I was leaving the car -- the dealership and was going to -- was planning on moving up here. Because my cousin had moved up here. So I was going to move up this way and find me a place.

Q Okay. And what was it -- what the plan for you and --

A Yes.

Q -- Martin Dixon --

A Yes.

Q -- to move -- let me ask the question.

Was the plan for you and Mar- --

A Yes. It was our plan.

MS. ZMROCZEK: Your Honor, he's answering

before he could even ask the question.

BY MR. SCOTT:

Q Sir, just let me just finish the question.

A Can you just repeat the question again because --

Q Okay. Was the plan for you two to move in together in Columbia?

A Yes, sir.

Q Okay. And who was going to pay for the -- the apartment or the house?

A We both was going to get a job.

Q You both were going to get a job. But you had that SSI check coming in every month at the time?

A At that time, yeah, until mine got cut off.

Q Okay. And did -- what was Mr. Dixon's way of making money? Do you know?

A No.

Q Okay. But did he say he had some money for helping you guys get a place?

A Yeah.

Q Okay. Tell me about -- when it came time for you and he to leave Charleston and come up here to look for somewhere to live, tell me about how that came together.

A We was talking about it.

Q You were talking about it?
A Yeah.
Q All right.
And then, how did -- how did talking about it turn into action?
A We was planning on like coming up here anyway and finding a place and making some phone calls. We was leaving from North Charleston to come up here.
Q Okay. And what happened? Did the -- did the plans change at some point?
A Yeah.
Q How did the plans change?
A When he met Ms. Jones and our plans just got change up at the last minute.
Q Okay. He met Ms. Jones. Is that what you said?
A (No audible response.)
Q And then what happened to y'all's plans?
A He said our plan was still going to go in place, but she going to be included.
Q All right.
So the original plan was you and Martin Dixon would get a place together. And then the plan change. Now was it his idea to change the plan or were you on board with it?

A No. That was his idea.

Q Okay. So he said now Michelle Jones is going to move in with us too; is that correct?

A Yeah.

Q And now when it came time for y'all to leave Charleston to come here, who all was it and who drove?

A Actually, on the way coming up, I drove. And I got a flat tire.

Q All right.

You -- you were driving and you got a flat tire?

A Yeah.

Q All right. How did you get the car running again?

A Drove the car to -- to the nearest gas station.

Q Okay. And -- and at some point, did Mr. Dixon help get your car running?

A He just helped me just get out of the car to the gas station off the -- of the interstate.

Q Antrone, you've got to speak up, man. You got to be -- you've got speak clearly. She can't understand you.

All right. You got a flat tire. And then, what happened?

A They drive the car to the nearest gas station off the interstate.

Q All right.

And you got the tire fixed?

A Yeah. And I called a tow truck to come and tow the car to the nearest tire place.

Q To the nearest tire place. Okay. How many tires did you put on the car at that point?

A At that point, two.

Q Two tires? Who paid for those?

A Not me.

Q Not you? Did Michelle Jones or did Martin Dixon pay for them?

A Michelle did.

Q Michelle did? Okay. And were Michelle and Martin Dixon boyfriend and girlfriend at the time?

A Yes.

Q Yes. Is that what you said? Is that what you said, Antrone?

A Yes.

Q Okay. And who told her to -- to pay for the tires for your car?

A He did.

Q Okay. After the tires get put on the car, do y'all come on up to Columbia?

A Yes.

Q Okay. And did y'all look for any apartments while you were here?

A No.

Q Okay. What did you do?

A Went to the hotel.

Q Okay. Hotel. Which hotel?

A Off of -- in Lexington.

Q Okay. Over in West Columbia.

A Yes.

Q Is that the OYO Hotel? Is that what it's called?

A Yeah.

Q Okay. And who got the room?

A They did.

Q Who?

A They did.

Q They did? Okay. And did all three of y'all sleep in the same room that night?

A Yes.

Q Okay. And then, what did y'all do after that? What did y'all do while y'all were in town?

A Take her to Walmart. Brought her back. Chill. And then I made a hundred dollars.

Q All right.

Antrone --

A Take -- -- take a hundred dollars. I made a hundred dollars by taking someone to the store.

Q You made a hundred dollars while you were here?

A Yeah.

Q You are driving the car predominately while you're here?

A Yes.

Q I heard you say something a minute ago about going to Walmart?

A I took somebody else to Walmart. I took her to Walmart so she could buy a phone, a cell phone for both of them.

Q Michelle Jones had to --

A Yeah.

Q -- buy a phone?

Okay. Did y'all ever get around to looking for an apartment?

A No.

Q No? What did y'all do?

A Stayed in that area and then left from -- left from up there Lexington, went back to Charleston.

Q Okay. What did you do in Charleston?

A He was trying to find that -- he was trying

to find that disability office, the Strom Thurmond office.

Q Martin Dixon was?

A Yeah. I think he came back up here.

Q Okay. And -- and so he -- he thought that the Strom Thurmond building was back in Charleston?

A Yeah.

Q So y'all went down there. And how did y'all find out the Strom Thurmond building was in Columbia?

A He asked around.

Q Okay. So y'all come back to Columbia at that point?

A Yeah.

Q All right. And what is -- what's the purpose of going to the Social Security --

A I -- I have no clue.

Q All right.

That was just something Martin Dixon was wanting to do?

A Yeah.

Q Okay. Was he paying you for driving him around?

A No.

Q Okay. August 7, we're here because somebody's found in the trunk of a car. How did we get

to that point? You see what I'm saying? How did we go from looking for the Strom Thurmond building and an apartment and ending up in the trunk of a car?

A I was in the trunk of my own car.

Q Okay. How -- how did you get to be in there?

A He told me in the trunk.

Q Wait a minute. You've got to speak up. Okay?

A I said: He told me to get in the trunk.

Q Okay.

A He hit me above my left eye with the crowbar and told me to get in the trunk.

Q Leading up to that, y'all are still in Columbia and driving around. Did y'all go over to Lexington Medical Center at some point?

A That's where we left from.

Q Say it again.

A I said that's where we was at. We was hanging in the -- him and Ms. Jones was inside the -- inside walking around the hospital while I was outside, sitting inside the car.

Q Okay. And can you help me figure -- how did we get to where he's asking you to get in the trunk -- telling you to get in the trunk of your own car? Did y'all have an argument?

A Yeah.

Q Say it again.

A Yes.

Q All right.

What was the argument over?

A Because I called my brother and told my brother I was leaving to go back to Charleston.

Q Who is your brother?

A Dexter.

Q Okay. And did Martin Dixon want -- you were his only ride at the time; is that right?

A I was his only ride. Yeah. At that time, I was like saying I was leaving. I wanted to leave and go back to Charleston. Because I was already making an appointment to go see my doctor.

And he was like, "You can transfer it up here."

I was like, "No. It's not that -- it's not that easy."

Q And so --

A And -- and so he talking about, "I want my money back."

I was like, "You know my -- my money just -- I was like my check just got cut off. I was out here trying to hustle to find me something to do -- to make

money." I told him, "I was going to get the money, but it won't be tonight."

Q Okay. So you say, "I'm ready to just get back to Charleston." Why were you ready to -- the doctor's appointment is what you just said?

A Yeah.

Q And were y'all making a lot of headway as far as finding an apartment? Y'all having any success finding an apartment?

A No.

Q And that's why you came to Columbia?

A I came -- my plan was to move up here anyway. I was going to stay with my cousin for a while and then branch off to get me an apartment.

Q What I'm saying is: You, Martin, Michelle come to Columbia to look for an apartment. Doesn't sound like y'all were looking at any apartments that I've heard you say.

A No.

Q Were you just kind of running errands for Michelle and Martin Dixon while y'all were here?

A Pretty much.

Q Okay. And they were making you drive them around?

A Uh-huh.

Q Was that a "yes" or a "no"?
A Yes.
Q And you're saying at some point, "I'm going back to Charleston." And you call your brother. Tell us why calling your brother got Martin Dixon angry.
A Because my brother told me, "When he come back -- when he come back by the car, call me and put him on the phone." And I did that.
Q Okay. So you called your brother Dexter. And -- and what did you tell your brother Dexter that -- that led to him asking to speak to Martin? What did you tell your brother?
A I told my brother I just didn't feel safe, you know, being up here and sitting in this -- sitting in the parking lot while they walking around in the hospital.
Q You didn't feel safe?
A (No audible response.)
Q Okay. So you were ready to get on back to Charleston. And was Martin Dixon letting you go back to Charleston?
A He said he would let me go, but I just got to give him his money back.
Q Okay. He said you can go, but you've got to pay me back first?

A Yeah.

Q And how much did he say you owed him?

A $400.

Q Did you have $400?

A No.

Q Okay. How did he take it when you told him you didn't have his money yet?

A He was angry.

Q Angry? Okay.

When your brother said put Martin Dixon on the phone, were you able to put Martin Dixon on the phone --

A Yes.

Q -- with your brother?How did that go?

A He turned around and say, "You made this area hot now from the phone call."

I was like, "Bro, that's my brother. My brother didn't say anything -- that if anybody hurt me, he was going to" -- you know, the conversation that they --

MS. ZMROCZEK: Your Honor, I think he is saying -- excuse me, objection. I think that -- I can't hear him even though I'm sitting 3 feet from him.

THE WITNESS: Listen --

MS. ZMROCZEK: But I think he's saying what his brother was saying. And if -- if that's what he saying, then I would object to it. But again, I can't hear and I am at the witness stand so.

THE COURT: Sustain the objection.

BY MR. SCOTT:

Q Now you were -- you were telling us what Martin Dixon was saying after he got off the phone with your brother. He said he was angry because you were making the area hot. What does that mean?

A I asked him, I said, "Why you asked me -- why I make this area hot for."

He said, "Because of the phone call you did."

I was like, "That's my brother. I always keep my brother informed with what's going on. So when I tell you that I wanted to go back to Charleston, I was going to leave y'all up here and go back to Charleston."

Q Okay. So he was angry that you called your brother because he felt maybe he was going to get in trouble or something for not letting you go back?

A Yeah.

Q And did -- did he eventually hang up on your brother? Or how did that end?

A They hung up.

Q Say it again.

A Yeah, he hung up.

Q He hung up. That's what you said; is that right?

A Yeah. Yeah.

Q Okay. So then he hangs up on your brother. He -- does he continue -- I guess, is he yelling at you? Is he -- how is he talking to you?

A Yeah. So he got in the car. They got in the car and went down to the gas station and talked. And then from there, he went to McDonald's and stand in the parking lot and talk some more. And then, he take my phone away from me. And I drove the car. Drove it in town. You know, drove it to the old building. Got out and talked some more. He said nobody ain't going to hear you scream and hit me above the left eye with the crowbar.

Q All right.

Let me -- let me -- are you capable of talking any louder than that? Or is that about as loud as you can talk?

A I said: He drove my car behind the old abandoned building. Told me to get out. And we argued some more. And then he took the crowbar and hit me above my eye.

Q Okay.

A And told me to get inside the trunk of the car.

Q This was behind --

A The old abandoned building.

Q And that was in the city of Columbia?

A Yes.

Q It was? Do you remember the name of the business?

A No.

Q You said it was abandoned?

And are you familiar with this area of Columbia being from Charleston?

A I mean, the only time -- the last time I been in Columbia was when my adopted sister was like living up here. Other than that, I ain't been in Columbia in a long time.

Q Okay.

A Up until then.

Q So you don't know where that building was that y'all were behind when he told you that, but you think it was downtown Columbia somewhere?

A Yeah.

Q Okay. And -- okay. Let me ask you something. What is State's 39? What's that?

A It's a crowbar.

Q Okay. This what he hit you in the head with?

A Yes.

Q And what happened after he hit you in the head with --

MR. SCOTT: The state offers State's 39 for admission?

MS. ZMROCZEK: Without objection.

(State's Exhibit No. 39 is admitted into the record.)

THE WITNESS: I started bleeding.

BY MR. SCOTT:

Q Okay. And what did you say after he hit you?

A I said, "I'm bleeding."

He said, "Get into the trunk of the car."

He told me -- he told Michelle whatever was in the trunk to throw it out and get inside.

Q Okay. And -- and this was after he hit you in the face with that crowbar?

A Yes.

Q He told you to get in the trunk. What did he say? He said nobody will hear you scream?

A Yes.

Q And let me -- you're fairly -- do you know about how much you weigh?

A About 262.
Q Okay. Is that a pretty cramped trunk in the car? Did you fit in the trunk very easily?
A (No audible response.)
Q Say?
A No, not with the spare tire in the way.
Q Yeah. Okay. It was in there. Is that what you said?
A Yes.
Q And that's State's No. 4. That's kind of what's on the screen?
A Yes.
Q All of that stuff was in there and you had to kind of climb in there with it?
A (No audible response.)
Q Is that right?
A Yes.
Q Okay. And do you remember the weather? Was it warm out? Was it cool out? Do you remember? You don't remember?
A (No audible response.)
Q What do you remember after you got forced into the trunk of the car?
A After I got -- after I got forced in the car, he broke the latch and slammed the trunk.

Q He broke the latch? What latch?
A The release latch.
Q Okay. You talking about the safety latch inside the trunk?
A Yeah. To open it from the inside.
Q Okay. And he -- you said he broke it?
A Yeah.
Q How did he do that?
A With his hand.
Q With his hand?
A Yeah.
Q All right. Describe what happens after you get in the trunk and he's broken that latch. Did you try to get out?
A (No audible response.)
Q Antrone, did you try to get out?
A I tried to.
Q Were you able to?
A No.
Q Could you see anything in there?
A (No audible response.)
Q Antrone, could you see anything in the trunk?
A No.
Q Was it dark?
A It was dark. So the only thing I could lean

up against was the -- the tire.

Q Uh-huh.

A And then I was trying to break the light, the tail light, tried to knock that off.

Q By kicking it or what?

A No. By loosening the wires.

Q Okay. Did any of that work?

A No.

Q Okay. What happens next? Did they drive the car then?

A Yes.

Q What do you hear from the trunk of the car?

A (No audible response.)

Q Antrone, what did you hear while you were in the trunk of the car?

A (No audible response.)

Q Antrone, did you hear my question?

A Yes.

Q What did you hear in the trunk of the car?

A Talking and driving the car on the side of the -- on the curb and all of that. And they both got out. And he said he was going to get out. "If you try to get out, I'm going to slice your throat."

Q "If you try to get out, I'm going to slice your throat"?

A Yes.

Q And then he continued driving after that?

A Yes.

Q What did you hear him saying?

A Said that he was going to drive the car to the lake.

Q Said he was going to drive the car into the lake?

A Yes.

Q Okay. And what else did he say about that?

A I guess he changed his mind. He said he would just burn the car up while I -- while I'm in the trunk.

Q Changed his -- all right.

So first he said, "I'm going to drive it in the lake." And then he says what?

A He would burn the car.

Q "I'll burn the car"?

A Yeah.

Q What you remember -- anything else you remember him saying?

A No.

Q No? All right.

What else do you remember? Did the car come to a stop at some point?

A Yes.
Q Okay. What did you hear him talking about?
A I didn't hear him talking no more.
Q You didn't hear any talking?
A No.
Q Did you -- did he say anything about trying to light the car on fire or anything else that you remember hearing?
A At that minute, yeah.
Q Uh-huh.
A He told -- he told Ms. Jones that.
Q He told Ms. --
A And then I passed out.
Q Okay. He told Ms. Jones what?
A That he was going to light the car on fire.
Q Did -- did you ever -- did you ever become aware that the car was on fire?
A No.
Q You just heard him talking about it?
A Yeah.
Q And at some point, how -- did you know they had left?
A I didn't hear no movement. I didn't hear nothing -- I didn't anybody talking around the car. I was like -- I was like thought they probably left.

Q They probably left? What was it like in the trunk of the car? I mean, do you remember whether it was hot or anything like that?

A Yeah. It was hot in there.

Q Okay. Were you able to breathe freely? Or what do you remember? Just describe it. Not a lot of us have been locked in the trunk of the car. Will you describe what else you remember about it?

A Hot, tired, my legs started to hurt. And like -- and then, I was in and out of consciousness breathing.

Q You did lose consciousness?

A Yeah.

Q You said your legs hurt? Why was that?

A Because I'm big. And the way my leg is in the trunk of the car, I kind of -- like I was sitting down. My leg was like this. I was trying to stretch my leg out in that car, in the trunk of that car. It didn't work.

Q You were cramped in there?

A Yeah.

Q What else did he say about setting the car on fire with you in it?

A That was the other way of taking my life, taking me out.

Q All because of $400?
A Yeah.
Q And did you -- did you have any knowledge that -- did you know of anything about paper being lit on fire and thrown inside of the car?
A No.
Q Okay. Was anything said about lighting a rag on fire in the gas tank?
A No.
Q You couldn't see anything from inside; is that right?
A Yeah.
Q But you remember Martin Dixon saying he was going to set the car on fire with you in it?
A Uh-huh.
Q Is that a "yes" or a "no"?
A Yes.
Q Okay. Let me show you State's 20, 29, and 30. Take a look at those real quick for me.
A (Reviews documents.)
Q Okay. Do you see it?
A Yes.
Q State's 18 and 19. Do you see those?
A (Reviews documents.)
Yes.

Q Why are Michelle Jones -- why is her medical paperwork in your car? Can you tell the jury why that stuff was in your car for Michelle Jones?

A Michelle.

Q Why was her medical paperwork in your car?

A (No audible response.)

Q Antrone, you've got the mic. Why was her paperwork in your car?

A She had gotten her medical paperwork from the -- from the hospital.

Q Okay. Why was Martin Dixon's letter in your car?

A His belongings that he put inside the car.

Q Why is Martin Dixon's medical paperwork in your car?

A That's -- that's where he had got -- he put all of his -- they put all they stuff inside the car.

Q Okay. There's several -- several medical documents of Martin Dixon's in your car; is that -- is that right?

A Yes.

Q State's 19. Why is Martin Dixon's medication in your car? Is it because he was in your car too?

A Yes.

Q Okay. And he was having you drive him all

over Columbia and Charleston?

A Yeah.

Q Okay. Have you ever seen him driving his own car?

A No.

Q Did you feel like you were being taken advantage of?

A In a way, yes.

Q Okay. Do you know how many times you lost consciousness in the back of that car?

A No.

Q Okay. And who was it who said they were going to drive the car in the lake?

A He did.

Q Who?

A He did.

Q Who is "he"?

A Martin.

Q Okay. And who was it that said you were going to die in the car?

A He did.

Q Okay. Who was it that said they were going to set fire to your car?

A He did.

Q And who -- whose belongings were in the car?

Where his belongings in that car?

A His and Ms. Jones.

Q Ms. Jones and Mr. Dixon's belongings were in your car?

A Yes.

Q Okay. All right.

Do you see Martin Dixon here today?

A Yes.

Q Where is he?

A Sitting right there.

Q All right.

Describe what he's wearing or what he looks like.

A (No audible response.)

Q Do you see him?

A Yes.

Q Okay.

A A blue -- blue jacket and a khaki pants.

Q Okay. Is he smiling right now at you? Is that who you're talking about?

A He's sitting over there, but he's not smiling.

Q All right. Anything else you remember about that day? Did you think you were going to die in the back of that car?

A Yes.

Q Okay. Anything else you remember about the time you want to share with the jury?

A No.

Q No?

All right.

Answer any questions Ms. Zmroczek has for you. Okay?

MS. ZMROCZEK: Your Honor.

THE COURT: Yes, sir -- yes, ma'am.

MS. ZMROCZEK: As far as scheduling, I don't know what the Court's intentions are, but this could take a while and it's going to require some media.

THE COURT: Require some what?

MS. ZMROCZEK: Some impeachment with media. He gave a statement.

THE COURT: Let's get started whatever it is.

MS. ZMROCZEK: Okay.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Mr. Dubose, you remember talking to the police in the hospital?

A Yes.

Q Yes?

A Yes.
Q And who did you talk to in the hospital?
A To investigator.
Q This investigator right here?
A Yes.
Q The one wearing the red tie?
A Yes.
Q Okay. And you told him some things about that -- about that day, right?
A (No audible response.)
Q I'm sorry?
A I did.
Q And you told him, you specifically told him that the man that did all of this to you was missing a finger; isn't that right?
A No. No.
Q You didn't -- you did not on August 9, 2019, tell Investigator Montgomery that the person who did this to you was missing a finger?
A No.
Q Nope? Okay.
And you're aware that that interview was recorded, right?
A I was aware.
Q I'm sorry? You --

A I was aware.

Q Okay. And so as you are sitting here today, you're telling this jury that you did not tell the investigator that the person that did this to you was missing a finger?

A No.

Q No? Okay.

I'm going to come back to that in a little bit. So I want to talk a little bit about you being in Columbia. So you had a phone?

A Yes, I did.

Q Okay. What was your phone number?

A I don't remember my number.

Q What kind of phone did you have? An LG phone?

A Yes.

Q Yes? An LG phone, the same one that was found in the vehicle?

A Yes.

Q Okay. That was your phone that was found in the vehicle, right?

A Yes.

Q Okay. And sp that's the phone that you say you called your brother on?

A Yes.

Q Okay. And what day was that?
A August 6.
Q August 6?
A That Tuesday night.
Q I'm sorry?
A That Tuesday night.
Q That Tuesday night. You called your brother from that LG phone?
A Yes.
Q Okay. And so I want to talk about -- a little bit about your time in Columbia. Because I could -- it was hard for me to hear. You sound a little bit more clear when I'm up here asking you questions. So maybe we can go through some of that. So when did you come up to Columbia?
A I came that -- I came that -- that Friday morning.
Q That Friday morning?
A Yes.
Q Before the -- before the sixth?
A Yes.
Q Okay. And who came with you?
A Martin Dixon and Michelle Jones.
Q Martin Dixon and Michelle Jones. Now you know them separately, right?

A Yes.
Q Because you know Michelle Jones. She's a bigger lady, right? Right?
A Yes.
Q And you know her from Charleston?
A Yes.
Q And in fact, she had accused you of several things while you were down in Charleston, right?
A Yes.
Q And that -- that made you mad, right?
A Yes.
Q She accused you of doing some not so nice things, right?
A (No audible response.)
Q Right?
A Yes.
Q And Martin Dixon, you said, was your friend?
A Yes.
Q And he often helped you when you needed help?
A Yes.
Q In fact, it was Michelle who gave you the $400 for your car, right?
A No.
Q No? That was -- that was Mr. Dixon, right?
A No.

Q Because he was helping, right?

A He said he was going to help get the car right the way it is to get back to Columbia. I have not seen none of that money.

Q I'm -- I'm sorry. I didn't catch that.

A I have not seen none of that money. Can you hear me now?

Q Now I hear you perfectly.

A Okay.

Q Thank you.

So you had not seen any of that money, right?

A No, I hadn't.

Q But -- but you do have a fixed car?

A She put thirty dollars' worth of gas in the car, get the oil change, bought the tire for the car. And then when the front tire had went flat, she paid another amount of money to put that tire on the car for us to get back -- get up here to Columbia, Lexington. I have not seen none of that money.

Q Okay. When did all of that happen?

A Like that -- like the weekend before the sixth.

Q So you were in Columbia in Lexington when all of that happened?

A No. Coming from Charleston.

Q So if you came up on Friday to Columbia, it was the weekend before that?

A It was on that Friday when we came up.

Q Okay. So she did all -- you said she did all of these things for you in Charleston?

A Yes.

Q Okay. But -- and I'm confused. Was it her or was it Mr. Dixon?

A Them two was talking.

Q I'm sorry?

A I said: Them two was talking.

Q Right. Those two were talking. But who fixed your car?

A She put the tire on, she did the oil change, and she gave me the money to put the gas in the car.

Q Right, she, Ms. Jones?

A Yes.

Q Not at the direction of Mr. Dixon; she just did that?

A Yes.

Q Okay. So you come up to Columbia. And what was your understanding as to why you came up to Columbia the Friday before this Tuesday?

A We was going to go look for a place to rent and find a job.

Q So you were going to look for a place to rent and going to look for a job. And who is "we"?

A Just -- the plan was just me and him. And then, she seen him and they (inaudible) and then things just got changed around the last minute.

Q Right. Because it was just going to be you and Martin, right?

A Yes.

Q Because y'all are friends?

A Yes.

Q And then Michelle, who has accused you of all of the stuff throws herself into the situation, right?

A Yes.

Q And she messed up your plans?

A Yes.

Q And that made you mad?

A I already been mad.

Q I'm sorry. You were already mad. Why were you already mad?

A Because she was not supposed to get my car.

Q Who was not supposed to get in your car?

A Michelle.

Q Why?

A Because I told him nobody get my car without my permission.

Q Okay. So you were mad because Michelle was in your car after she fixed it?

A No. Before. I was like don't nobody get my car without my permission.

Q Okay. So when was she in your car without your permission?

A When we was over by the supercenter down in Charleston by the DSS office.

Q Okay. When was that?

A Like the end of July; like the last week, July going over into August.

Q So July to August. So you've been festering, you've been mad that she's been in your car since the end of July?

A Yes.

Q Okay. And then she messes up your plans by getting in the car to come up here to Columbia?

A Yes.

Q You didn't like that either, did you?

A No.

Q So you say that while you were up here, you were giving other people rides in your car? That's how you made money?

A I took -- I took this other dude and lady who was staying at the hotel, took them to the store.

Q Because that's kind of what you do, right, is you give rides to people and they either give you money or they help you out by fixing your car?

A No.

Q No?

A I made a hundred dollars that day for taking them, you know, to the stores.

Q They gave you a hundred dollars, these people?

A Yes.

Q And who are these people?

A Someone that he know.

Q Okay. And -- and where did you meet them?

A At the hotel.

Q And there were two of them?

A Yes.

Q And when y'all went to the store, who was in the car?

A Just the two people I took to the store.

Q So Martin wasn't -- wasn't ordering you around the whole weekend, was he?

A No.

Q No? Okay.

Explain to me -- so you called your brother on the sixth. What time was that?

A I don't remember.
Q You don't remember. Was it light or dark?
A It was night.
Q It was nighttime on the sixth. And you called your brother from the LG phone that was in your car?
A Yes.
Q And then -- and -- and you said that -- I think I heard you say Martin said you can go back to Charleston whenever, right?
A He told me I could leave and go back to trusting.
Q Right. He told you you could leave?
A I would have to pay him his money back.
Q His money or her money?
A His money.
Q So did he give you extra money that I don't know about?
A Like I said, the $400 that he say that I owe him, I don't know him $400.
Q Right. Because he never gave you $400?
A Exactly.
Q Right. So you didn't owe him any money. But you owed Michelle money, didn't you?
A I didn't owe her money neither.

Q You didn't owe her money either?
A No.
Q So you didn't owe anybody money?
A I don't owe neither one of them money.
Q Okay. It was your car, right?
A My car.
Q Your car. Who's the owner of your car?
A I was the owner of my car.
Q Who's the controller of your car?
A Me.
Q Right. So you had a phone, you had a car, and you were told -- for whatever reason, you said Martin said you can go back to Charleston. So why didn't you?
A He said I can leave to go back -- he was letting me leave to go back to Charleston, but I would have to pay him his $400 first.
Q Okay. So then you call your brother. But you don't know what time?
A No.
Q I'm sorry?
A No.
Q Okay. And then what happens after you call your brother? You said you drove to a building? I couldn't hear you very well.

A I said after me and my brother talk, while they was still inside the hospital, he came outside --

Q Wait, wait, wait. Stop. He was still inside the hospital. Is that what you said?

A At the time when I talked to my brother the first time, he was still at the hospital.

Q Who "he"?

A Me, Ms. Jones, and Martin.

Q Okay. You, Mr. Jones, and Martin were at the hospital when you -- when you called your brother the first time?

A Yes.

Q Okay. And was that on August 6?

A Yes.

Q Okay. And that's that hospital paperwork that we saw in there?

A Yes.

Q And so then -- and you called your brother more than once?

A I called him that -- I -- I called him that time.

Q But let me get this straight. You're at the hospital with you, Michelle, and Martin, right? And they are both being treated or who was being treated?

A I don't know. Because I went back -- I've

been outside.

Q What?

A I was outside sitting in my car.

Q You were outside sitting in your car?

A While they were inside.

Q While they were inside, right?

A Yes.

Q Okay. And then you left, didn't you?

A I went to the gas station.

Q Yeah. You left. Went to the gas station. And then where did you go?

A Came back.

Q And?

A Sat in my car.

Q Sat in your car by yourself?

A Yeah. While they was still like -- like I went to the gas station. Came back. Sat in a car. Drove up. Stayed in the hospital parking lot. Drove to the gas station. Well, he went to the gas station store and bought some -- bought something, bought chips or something from the gas station. Drove him back over there by the door to the hospital. And I just sat in the car.

Q Nothing stopping you from going back to Charleston?

A No.

Q And you didn't have a place to live at this time, right? You were -- you were homeless?

A Yes.

Q But you had your car?

A Yes.

Q Your stuff was in the car as well, right? It wasn't just their stuff. That was your stuff in the car, right?

A My stuff.

Q Your stuff?

A The only thing that was in my car was a -- like the information to the car. My bag and clothes had got thrown out.

Q Your bag and clothes got thrown out? Where was that?

A Behind -- behind the -- behind the -- the -- the old abandoned building that we went in.

Q Behind the building?

A Yes.

Q And that was behind the building that you say that -- that you got hit in the head?

A Yes.

Q Okay. Now you remember in the hospital telling Investigator Montgomery that Ms. Jones hit you

in the head?

A No.

Q Okay. You said it was Martin that hit you in the head?

A Yes.

Q And it's your testimony that he hit you in a head with -- this is State's 39, right?

A The crowbar, yes.

Q The -- the -- the crowbar?

A Yes.

Q Okay. What -- what side did he hit you with?

A Where you got your finger at.

Q Right here where I've got my finger?

A In the middle.

Q This round part?

A No.

Q This -- this -- the bent part?

A Yes.

Q Right there where I've got my finger? He hit you in head?

A Yes. Above my eye. Yes.

Q Above the eye. And it started bleeding right away, right?

A Yes.

Q Did you clean this crowbar?

A No.
Q What happened with the crowbar?
A I didn't clean it.
Q I'm sorry?
A I said I didn't clean it.
Q You didn't clean it?
A No.
Q Okay. And so the way I understand it now is -- your clothes were tossed before or after you got hit in the head?
A Before.
Q Okay.
A Because I just went and did laundry that Sunday.
Q You just went to the laundry?
A Yeah.
Q Where was that?
A In Lexington somewhere.
Q You went and did the laundry by yourself too, right?
A Yeah.
Q Okay. And so your story is they hit you -- or not they, that Martin hit you in the head with this crowbar and then tells you to get in the trunk?
A Yes.

Q And how much did you weigh at this time?
A 262.
Q And how tall are you?
A Five seven.
Q Okay. And so you just get into the car?
A Yes, I was getting inside the trunk of the car.
Q Now, you've been up to Columbia before. You're familiar with where the homeless population gathers, right, when they don't have a place to stay?
A I haven't been up to Columbia before.
Q Nope, never been?
A No.
Q Okay. So you climb into the car yourself?
A As I was getting in the trunk of the car, Michelle pushed me.
Q I'm sorry? Michelle pushed you?
A Yeah.
Q Okay. And then what happened?
A As he was closing the trunk, he broke the latch so I won't get out.
Q She did?
A He did.
Q All right.
So he broke the latch. How did he break the

latch? You said with his hand?

A Yes.

Q Explain to me where the latch was?

A Like in the middle when you open the trunk. Right there in the middle.

Q Okay. And then it was dark. You said you don't know -- oh, you said what did he say to you next after that?

A Say it again.

Q What did he say after you got in the trunk and you said he broke the latch? Did he shut it?

A Yes.

Q Okay. And then what happened?

A I don't remember.

Q I'm sorry?

A I don't remember.

Q You don't remember. Okay. What's the next thing you do remember?

A I remember telling him to open the trunk and let me out.

Q You still have your cell phone?

A No.

Q Okay. Where -- where is your phone?

A He took it.

Q The same phone that was found in the car?

A Yes.

Q Okay. I must have missed that part when you told me he took it. When did he take it?

A He took it from me after he left the hospital.

Q So you said the first time you talked to your brother. How many times did you talk to your brother?

A I talked to my brother twice that night.

Q Okay. Go ahead. I'm sorry. I didn't mean to cut you off.

A I said I talked to my brother twice that night.

Q Okay. Twice that night. The first time you said was when they were in the hospital?

A Yes.

Q Okay. So he didn't talk to Martin that time?

A No.

Q And you were telling your brother while you're by yourself in your car that you want to go home to Charleston?

A Yeah.

Q So you're in your car with your phone and the keys and you're telling your brother you want to leave?

A Yes.

Q Why didn't you leave?

A (No audible response.)
Q You had a car, right?
A Yeah.
Q You had a phone?
A Yes.
Q And you had nobody around you. You did leave. You went to the gas station, right?
A Their belongings was in my car.
Q Their belongings were in your car. And we know that because that is how they were identified was because of the stuff that was found in your car, right?
A Yes.
Q Because if you just say they're in your car, there is no proof. But if their belongings are in your car, then there's proof, right?
A Yes.
Q So that's helpful to you, right?
A Yes.
Q And so when is the second time you talked to your brother?
A After he came -- after he come to the car and I called my brother back. And my brother said put him on the phone.
Q So let me ask you this: The first time you talk to your brother and you said brother, I want to

leave --

A Yeah.

Q -- what did -- after talking with him, did you feel like you couldn't leave?

A No.

Q Okay.

A My brother just told me --

Q What?

A My brother -- my brother just told me to leave. So I told him, I said, they stuff is in my car. If I leave -- my brother said just -- my brother was telling me to go find them and tell them to come get their stuff so you could leave.

Q Okay. So your brother told them to come get their stuff?

A No. My brother told me.

Q Oh. So did you tell them to come get their stuff?

A I told them -- I told them, "Y'all need to get y'all stuff because I'm ready to go back to Charleston."

Q When was that conversation?

A When he got to the car.

Q And was it just him or him and her?

A Just him.

Q I'm sorry?
A It was just him.
Q So he comes back to the car?
A Yes.
Q But then he goes back inside?
A Yes.
Q Okay. What time did they get out of the hospital? And this is all the same night, right, the night that you got driven to the building?
A Yes.
Q No doubt in your mind?
A No.
Q Okay. Talk to me about the Strom Thurmond building. What was -- I heard you say Strom Thurmond building, but then I couldn't hear what you said. What where you saying when you said the Strom Thurmond building? And we're talking about the one right here in Columbia, right?
A Yes.
Q Right by the cemetery.
A He wanted to go there.
Q "He" who?
A Martin.
Q Okay. Why did he want to go to the Strom Thurmond building?

A To get something changed on his check.
Q I'm sorry?
A To get something changed on this check.
Q Right. Because not only were you getting disability checks, but Martin was getting his own disability checks, right?
A Yes.
Q So he didn't need your disability checks. He had his own --
A Yes.
Q -- right? And he needed to update his address --
A Yes.
Q -- right?
A (No audible response.)
Q Isn't that right?
A Yes.
Q Because he had a place to live in Orangeburg, right, because that's where he lived?
A Yes.
Q I'm sorry?
A Yes.
Q So he has a house in Orangeburg. He says while we are in Columbia, I'm going to change my address to make sure my checks keep coming, right?

A Yes.

Q And I want to talk about this hotel that y'all stayed at, right, that Martin paid for, right?

A Yes.

Q Martin paid for the hotel and it was multiple days, right?

A Yes.

Q And what day did you check out in relation to all of this fight stuff happening?

A Check out Monday.

Q You checked out that Monday. So what did y'all do that Monday, then?

A We drove back down to Charleston to try to find that building and that office. But it wasn't in Charleston. It wasn't in Charleston. So we drove back up towards Lexington.

Q So you drove all the way to Charleston on Monday?

A Uh-huh.

Q Where you wanted to be?

A Yes.

Q But then you turn around and drive back?

A Yes.

Q Was there a gun to your head?

A No.

Q Were you forced?
A No.
Q So when did you come back? What day did you come back to Charleston -- to Columbia?
A That same day.
Q So you drove an hour-and-a-half down to Charleston to turn around and come back an hour and half?
A Yes.
Q Now did you tell your brother you had gone to Charleston already?
A I told him -- me and my brother be talking.
Q You and your brother don't talk?
A We got that bond. We talk all the time.
Q Okay. All right.
So how does he know Martin?
A Because he talked to -- he talked to Martin before.
Q He what?
A He talked to Martin before.
Q When was that?
A When we used to stay together.
Q And what year was that that you used to stay together?
A 2016.

Q Right. 2016, right? Three years before this?

A Yes.

Q And you stayed in Martin's apartment that he paid for that he let you stay there, right?

A Yes.

Q And now, in 2019, three years later, you liked -- you liked living with Martin, right?

A Not really, but yeah.

Q Yeah. Because he did lots of things for you, right?

A Yes.

Q But Michelle messed that up, didn't she?

A Yes.

Q And you were mad about that; isn't that right?

A Yeah.

Q So you -- how many days were you in the hospital?

A Where?

Q One day, right?

A Where? That hospital? The big hospital?

Q Uh-huh.

A Wednesday, Thursday, Friday, Saturday, Sunday, Monday. I got discharged that Tuesday.

Q Okay. And they treated you for a little cut over your eye, right?

A Yeah.

Q And then you had some -- you had some medical problems before all of this, right?

A Yeah.

Q And so that's why you stayed in the hospital, because they were dealing with those medical problems, right?

A Yeah.

Q I'm sorry?

A Yes.

Q Okay. Do you recall when you were back in the hospital you -- you didn't tell Investigator Montgomery that Martin hit -- so you told them Martin hit you and not -- and not Ms. Jones?

A That's what I told him.

Q And that was on August 9, 2019?

A Yes.

Q So two days after this happened?

A Yes.

Q Okay. And did you tell him about -- did you tell him all the places that you went to?

A Yes.

Q Okay. And you told him about the building

and getting your clothes thrown out?

A Yes.

Q And you said you knew the interview was recorded, right?

A Yes.

Q So if I play you a portion of that tape about you talking about you knew Martin had a missing finger, would that refresh your recollection?

A No.

Q I'm sorry?

A No.

Q It wouldn't?

A No.

MS. ZMROCZEK: Okay. Beg the Court's indulgence.

THE COURT: Ladies and gentlemen, I think we're going to quit for the day and start back at 9:30 tomorrow morning. Please do not discuss the case. See you-all at 9:30 tomorrow morning.

(The jury exits the courtroom at 5:23 p.m.)

THE COURT: So what are you about to do?

MS. ZMROCZEK: Oh, sorry. Your Honor, what I planned on doing is just play -- I just needed to find it. I wasn't aware that he was going to testify to that, the portion of the testimony

where he -- the portion of his interview -- I'm sorry. (inaudible). The portion of his interview where he tells the investigator that the person that did this was a missing a finger.

THE COURT: All right.

And any objection to that approach?

MR. SCOTT: I think she's got her laptop.

So I assume you're just going to go through and show him that portion and have him either endorse it or deny it?

MS. ZMROCZEK: Right. Well, I mean, so I laid the time and place that the conversation occurred. He's denying it. I said, "If I played it for you, would it refresh your recollection?"

He said no. But I still think I have to play it for him.

THE COURT: He said it's not going to refresh his recollection.

MS. ZMROCZEK: I know. So I mean, I can do one of two things. I can -- I mean, I can just publish it through Montgomery when he testifies. Because I think that I laid the foundation for that, which if he's going to say that wasn't me, then, you know. But he already said it wouldn't refresh his recollection. But I think I laid the

foundation to be able to enter that as impeachment evidence, that portion of it.

THE COURT: All right.

So it -- it was a good time to stop.

MS. ZMROCZEK: Yes.

THE COURT: So you can find it.

MS. ZMROCZEK: Yeah. I have to find it. Yeah. The interview is -- is -- is very long. I have to be able to find it. I just didn't want to waste everybody's time.

THE COURT: Did you want to give him a refresher today so that he'll be ready for tomorrow? Or you'd rather just --

MS. ZMROCZEK: I'd rather just have him --

THE COURT: -- just hit him with it.

MS. ZMROCZEK: I'd rather do it in the morning, Your Honor. I know they have his statement.

THE COURT: Yeah.

MS. ZMROCZEK: So they can play it for him as well.

THE COURT: Yeah. All right.

We'll pick it up in the morning, then.

Mr. -- tell me your name again.

THE WITNESS: Antrone.

THE COURT: Mr. Antrone, you're going to be here at what time tomorrow?

THE WITNESS: 9:30.

THE COURT: All right.

You living nearby or you have a ride?

Y'all make sure he's here?

THE BAILIFF: Judge talking to you.

THE COURT: All right. Reconvene at 9:30 tomorrow morning.

MS. ZMROCZEK: Thank you, Your Honor.

(The Court recesses for the day.)

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CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: August 14, 2023

/s/Teresa B. Johnson

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	Case No.: 2020GS4001501, 2020GS4001502
State of South Carolina,	
vs.	
Martin Dixon,	
Defendant.	April 4, 2023

TRANSCRIPT OF TRIAL - DAY 2 OF 4

BEFORE THE HONORABLE CLIFTON B. NEWMAN
Circuit Court Judge, presiding

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

For Government: Christopher Dale Scott, Esq.
Senior Assistant Solicitor

John Walter Whitmire, Esq.
Assistant Solicitor

For Defendant: Aimee J. Zmroczek, Esq.
Attorney at Law

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P R O C E E D I N G S

(Court is called to order on Tuesday, the 4th day of April 2023, at 9:36 a.m.)

THE COURT: Come on back, Mr. Witness, Antrone Dubose.

Mr. Dubose, why can't you talk into that mic so we can hear you?

THE WITNESS: I can talk.

THE COURT: Talk up. You've got a mic THERE and everything. You see me? When I start talking, I talk into this mic so people can hear me. You can hear that?

THE WITNESS: Yes, sir.

THE COURT: Yeah. You've got the jury over there listening. They want to hear what you're saying. I want to know what you're saying. And everybody else want to know what you're saying. So do a better job into speaking into that. All right?

THE WITNESS: All right.

THE COURT: Good.

THE BAILIFF: Good morning. He don't have to be sworn in again, do he? Come on.

THE COURT: He's already sworn in and everything.

THE BAILIFF: Yes, sir.

Thank you, sir.

Yeah. Just sit up like that.

THE COURT: Anything before the jury comes in?

MS. ZMROCZEK: Nothing further -- or nothing from the defense.

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

THE COURT: All right.

Let's bring them on, Madam Bailiff.

THE BAILIFF: Yes, sir.

(The jury enters the courtroom at 9:38 a.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right.

Thank you.

Good morning. Welcome back.

Mr. Dubose is still under cross-examination.

Ms. Zmroczek, you may proceed.

MS. ZMROCZEK: Thank you, Your Honor. May it please the Court.

ANTRONE DUBOSE

having first been duly sworn, testifies as follows:

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q It will make it less painful for everybody if I don't cough.

Good morning, Mr. Dubose. I've got a few more questions for you.

So as I understand your testimony under oath yesterday, you testified that this all happened the night of the -- after you left the hospital?

A Yes.

Q Okay. And you recall being in the hospital, right?

A Yes.

Q Okay. And you recall telling -- well, let me ask you this first. You had some items in the car as well, correct?

A Yeah.

Q You had your medication?

A Yeah.

Q Okay. And they -- and they had a social worker or work at the hospital come and go get that medication out of the car and bring it to you, right?

A My blood thinner.

Q I'm sorry?

A My blood thinner.

Q Yeah, yeah. Your blood thinner, right?

And then you remember telling Ms. Jacobs when

she was talking about you on discharge, meaning when they were discharging you from the hospital, that you told her that you desired to go to the shelter in the Columbia area?

A Yeah.

Q Okay. You told her that, right?

A (No audible response.)

Q Mr. Dubose, those are all of the questions I have for you. Thank you.

THE COURT: Mr. Scott, anything else?

MR. SCOTT: Yes.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q When did you live with Mr. Dixon, Mr. Dubose? Didn't y'all live in Summerville together at some point?

A Summerville? No. He came and spent the night --

THE COURT: What are you saying over there, Mr. Dubose? Talk up.

THE WITNESS: I said: He came and spent the night with me and my other friend in Summerville.

BY MR. SCOTT:

Q Okay. But where you live -- you lived with him for -- at some point, right?

A Yes. When I went to Charleston.

Q Okay. And the idea when you came up here to Columbia, was he telling you y'all were going to move back in together up here somewhere?

A Yeah.

Q And at that time, you were living out of your car; is that right?

A Yeah.

Q Okay. And what -- she was asking about the hospital. What were you guys doing over at the hospital before all of this went down?

A Since we ain't had no -- since the money ran out for staying at the hotel, we went to the hospital instead of hotel.

Q Hold on. I heard the money ran out for the hotel. But she can't hear you. She's behind that glass. You've got to say it louder.

A I said when the money ran out to get -- to pay for the room again, we all went to chill out at the -- at the -- over at the hospital.

Q Okay. You're talking about Lexington Medical Center?

A Yeah.

Q And was that close to that OYO --

A Yes.

Q -- Hotel?

And who was the one who rented the room at the OYO?

A They did.

Q "They" who?

A Him and Michelle.

Q Okay. Did you know Michelle Jones prior to this?

A Yes.

Q Okay. And you already said you used to live with Dixon. You said when y'all came up here, the original plan was you and Dixon were going to find a room together?

A Yes.

Q And then at the last minute, he changed the plans and said Michelle was coming?

A Yes.

Q And why -- why did that -- why did you -- you weren't for that, were you?

A No.

Q And why was that?

A Because I didn't like it. I already didn't like her because she already done accused me of a lot of stuff.

Q Okay. You didn't like her?

A No.

Q Okay. And again, did y'all ever go around -- the purpose of coming up here was to look for a house. Did y'all ever go around and look for an apartment?

A No.

Q Was the plan y'all were going to stay at the homeless shelter here?

A No.

Q Okay. Were you wanting to go look at some houses to rent or apartments to rent?

A Yeah.

Q Okay. But it sounds like y'all were just kind of riding around aimlessly around Columbia. Is that fair to say?

A Yeah.

Q Okay. And you say at some point, you said you wanted to go home. I just want you to explain --

A When he was -- when we went over to the plastic Center, I was on my phone calling to make an appointment to -- make an appointment to go see my doctor back in Goose Creek. And then all of a sudden, after I got off the phone with -- with my doctor, he had told her to keep an eye on me. So he -- she told him what I was planning on doing. And I told her, I said, "I'm my own man. I'm a leave. I'm going to

leave y'all."

Q All right.

He told Michelle Jones to keep an eye on you --

A Yeah.

Q -- is what you said? And she overheard you talking to your doctor?

A Yeah.

Q And then what? They didn't want you leaving?

A No.

Q Well, what did Martin Dixon say when you saw him -- said you needed to go to your doctor in Goose Creek?

A I told him -- like I -- like I told him when we got an argument, I told him, I said -- I said, "I'm -- like, I'm going back down to Charleston. Because I'm making an appointment to go see my doctor."

And his word was, "You can transfer doctor and come up here."

And I'm like, "It's not like that."

Q Okay. And when -- when is the point when you call your brother Dexter?

A When -- when him and Michelle was inside Lexington Hospital.

Q Okay. You had to sneak away and try to call

him?

A I went back outside. I mean, I was already sitting inside my car. So I just called my brother, you know, and tell him what my plan is.

Q What was your plan?

A To head on back to Charleston.

Q You were just going to ditch them and leave them here?

A Yeah. I was just going to tell them they had -- he had to get their belongings; I had to go.

Q Okay. And at some point, you put Martin on the phone with your brother Dexter?

A Yeah.

Q How did that go over?

A After -- my brother told me when he come back, told us to call -- "Call me up and I'll talk to him."

Q Okay. And did -- what I'm saying is, how did that conversation go? You put Martin on the phone with your brother Dexter?

A Yeah.

Q Was it a good conversation? Did they seem to be getting along? What you remember about that?

A Oh, no. He stepped away from the car.

Q Okay. So you didn't hear their conversation?

A No.

Q Did -- did Mr. Dixon's attitude change when he got off the phone with their brother?

A Yes.

Q How so?

A He was like he -- he got -- he got in the car and said, "You done made this area hot by leaking that phone call." I told him that's my brother. I'm like --

Q "You're going to make this area hot"? Okay. What does that mean? I don't understand. What were y'all doing that he was worried about getting caught doing?

A I don't -- I don't know what -- I don't know what his plan was. I just called my brother and told him I was going to tell them to get their belongings so I could go back.

Q Okay. After the conversation with your brother, who drove your car? You or Martin?

A Him.

Q Him?

A (No audible response.)

Q And is this when you go to the abandoned building and the tire iron upside the head happens?

A Yeah.

Q Okay. And you said he's driving away after he gets you in the trunk. And he was talking about driving into the lake. That's the first thing you remember hearing?

A Yeah.

Q Did you think he'd really do it or how did you feel about that?

A No.

Q Were you scared?

A I was already scared when I was in the trunk of the car but...

Q Okay. You weren't able to escape? Is that your testimony?

A Yeah.

Q And at what point -- what else did he say about driving into the lake that you remember?

A While he was driving my car, he just said that. Then he changed his mind about driving the car into the lake and taking -- driving it somewhere and burning it while I was in the trunk of the car.

Q Do you remember what he said specifically about burning the car up while you were in it?

A He said, "Since you love your car this much, I'm going to burn you up in it."

Q "Since you love your car so much, I'm going

to burn you up in it"?

A Yeah.

Q And then you remember the car coming to a stop and them discussing burning the car anymore? You remember anything about that?

A No.

Q Okay. Did you ever -- okay. And you couldn't see them when they were lighting stuff on fire?

A No.

Q But you could just hear them talking about?

A Yeah.

Q Okay. Besides -- okay. So he -- besides when he drives it to the cemetery and he's talking about driving to the lake and burning the car up, had he been driving the car anymore over the four or five days y'all were in Columbia?

A No. Just that one time.

Q Okay. So usually, he was having you drive him around to the different places?

A When we got to the hotel and parked the car. And that -- that next day, I took some people that he know to the store.

Q But you were driving for the most part over those four or five days you were here?

A Yeah.

Q Okay. All right.

And now what was -- Michelle Jones, what was her involvement? Was she helping him get you in the trunk or what was she doing while he was telling you to get in the trunk after he hit you?

A She helped him.

Q Huh?

A She helped him.

Q How so? Did she ever hit you or kick you or anything?

A Yeah.

Q Explain that.

A When he told me to get in the trunk, I was like, "Man, I'm not getting" -- I said to myself, "I'm not getting in that trunk."

He was like, "Get in the trunk."

I said no.

And so she turned around and said, "Get in the trunk."

"I'm not getting in the trunk."

So then after I get -- while I was getting in the trunk, she kicked me.

Q She was kicking you?

A Yeah.

Q Was she saying anything else?

A No.

Q Why did you get in the trunk?

A He told me to.

Q Okay. What did you think would happen if you didn't get in the trunk?

A If I didn't get in the trunk?

Q What did you think would happen if you did not listen to his orders to get in the trunk?

A I mean, if I didn't take his orders of getting in the trunk, he probably would've tried to cause something and either stab me.

Q I guess that's my question. Were you afraid what would happen if you didn't obey his orders?

A Yes.

Q You got in the trunk after he hit you in the head with the tire iron?

A Yes.

Q Okay. Was it easy for you to fit into the back of that trunk?

A No.

Q Okay. All right.

What -- what did you think while you were in there? Did you think you were going to die? Did you think everything was going to be okay? What did you

think while you were in that trunk?

A When I was in the trunk, I was like, "This is it. Like I'm going to die anyway."

Q You said you were going to die?

A Yeah.

Q And then, the guy who hit you with the tire, Martin Dixon, you see him here today?

A Yes, sir.

Q Where is he? Point to him?

A Right there. (Indicating.)

Q Talking about the man right here wearing the -- sitting at the table?

A Yes, sir.

Q All right. Thank you, Antrone.

MS. ZMROCZEK: Just very briefly, Your Honor.

THE COURT: Yes, ma'am.

RECROSS EXAMINATION

BY MS. ZMROCZEK:

Q All right.

You had control of your car, right?

A Yes.

Q You had the keys, right?

A Yes.

Q You had the phone?

A Yes.

Q You called your brother. In fact, you left the hospital. You left the hospital and called your brother at the gas station, right?

A No. I called him while I was sitting -- sitting inside my car in the parking lot at the hospital.

Q Okay. And you talk to your brother by -- you called to him twice that night you testified yesterday, right?

A Yes.

Q Okay. And you were in the car by yourself?

A Yes.

MS. ZMROCZEK: No further questions, Your Honor.

THE COURT: You may step down, Mr. Dubose. You may call your next witness.

MR. SCOTT: The state calls Dexter Dubose.

THE BAILIFF: Raise your right hand. Face the clerk. Put you left hand on the Bible.

THE CLERK: State your full name, please.

THE WITNESS: Dexter James Dubose.

THE CLERK: You solemnly swear the testimony you're about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Have a seat right there.

THE BAILIFF: Watch your step.

DEXTER DUBOSE

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Good morning, Dexter.

A Good morning.

Q Where are you from?

A Charleston, South Carolina.

Q But you're living here in the Midlands now?

A Yes. I live in Columbia now.

Q What do you do?

A I am a union brick mason foreman.

Q Okay. And I understand you travel all over the country really doing brick masonry work?

A Yes, sir.

Q How long have you been doing that?

A Brick mason or the union.

Q Well, brick masonry really.

A I've been a brick mason for 30 years, 32 years.

Q And before that, you were in the Marines; is that right?

A I started brick mason, graduated from high school, went to the Marine Corps, and came back to doing brick mason.

Q Okay. You served in the Marines for five years; is that right?

A Yes, sir.

Q Who is that, the black male on the front row right here?

A Who? Antrone?

Q That's Antrone?

A That's -- that's my brother.

Q Okay.

A Younger brother.

Q Younger brother. And it's four of you boys in your family?

A Yes, sir, on my mother side.

Q And how do you fall in line?

A I'm under the oldest. So I'm the second oldest.

Q Second oldest. And Antrone comes after you?

A Yeah, he comes after me.

Q And y'all got one other younger brother?

A Yeah, the baby.

Q Okay. Tell me about growing up with Antrone. Did he need a lot of assistance?

MS. ZMROCZEK: Your Honor, I would object to relevance. The question was: Tell me about growing up with Antrone. And I would object to relevance to this trial.

THE COURT: All right.

Response?

MR. SCOTT: Response was just explaining diminished capacity to some degree.

THE COURT: Can't hear you.

MR. SCOTT: Explaining just how Antrone presents himself and really reliant on other people and easily persuaded to do things.

THE COURT: Any response?

MS. ZMROCZEK: Your Honor, again, I just don't see the relevance.

THE COURT: All right.

Overrule the objection.

BY MR. SCOTT:

Q Growing up with Antrone, did he require assistance from you guys, your -- your family?

A Yes.

Q He testified earlier he had special education going through school?

A Correct.

Q Okay. Have there been times you had to look

out for him?

A I was -- I was the main one fighting for him all through high school.

Q Did he get picked on?

A Yes.

Q Okay. Ever have times when he was taken advantage of to your knowledge?

A Yes.

Q Did that happen often?

A Yes. That's why he made me his power of attorney when he got -- started getting checks. They didn't want to put it in his name at first.

Q Okay. So you became his power of attorney?

A Correct.

Q And what is his disability? Is it --

A He had a head trauma when we was like -- I got shot and he got hit in the back. It was probably about eight years old.

Q Eight?

A So his mind is still eight years old. He talks to my kids like they're the same age.

Q And how old are your kids?

A Now they're 11 and 12 now.

Q He is 44, but he communicates with your 11 and 12-year-old as of --

A Yeah. They played together.

Q And were you concerned when he started getting his check that other people would divert it to their own use?

A Yes.

Q Have you had to step in before to help him out when people kind of used him a little bit?

A Yes. A couple of times. Because one time, the gentleman that he was staying with in Summerville was taking $600 and he could only stay there for two weeks.

Q $600 to stay in an apartment?

A A trailer.

Q A trailer?

A Mobile home for two weeks. I stepped in. And I was doing a job at First International African-American Museum, Downtown Charleston. So I got a place in the making and got his check turned back on. And he came and stay with me and he didn't have to pay anything.

Q Okay. And you -- are your parents still living?

A No. Our mother got shot right in front of us when we was -- well, I was 10 years old. So he was about nine. Our mother got shot and killed.

Q This was in Charleston?
A Yes.
Q But you still have -- you still have family living in North Charleston or Summerville area?
A Well, it was mostly in the country, St. Stephens, Moncks Corner. We're in the country part, not the city.
Q Have you at times tried to plead with Antrone to go move back in with your family in Moncks Corner?
A Yeah. Go home. That's what I tell him all the time. In Charleston, people pray on him all the time. If he got 50 bucks in his pocket and you ask for 50 bucks, he's going to give you 50 bucks.
Q Okay.
A And then he's going to call me wanting money.
Q So people separate him from his money and then he comes --
A Then he comes to me. And I have no choice but to look out for my brother.
Q Okay. And you protective of him?
A Yes, sir.
Q And we already talked about your travel all over, not only just the southeast, but you travel out west, too, at times?
A Yeah. I done been as far west as Portland,

Oregon; Tacoma, Washington; Seattle, Washington; California; Vegas. I've been to almost every state almost.

Q Pretty sought after for your masonry?

A Yes. When I get called, I've got to go.

Q August 7, 2019, that's why we are here, something happened to Antrone on that particular day. Do you recall receiving a phone call from him the day before, that would've been August 6, 2019?

A I think I was in -- I think I was in Florida then. If I'm not mistaken, I think I was in Florida.

Q You had a project down there?

A In Florida, yeah.

Q Okay. And -- but you remember Antrone giving you a call?

A Yeah. First, he called me when he was getting ready to get a car. And I was like, "You going to get a car? You got a license?"

MS. ZMROCZEK: Objection, Your Honor; hearsay.

THE COURT: Objection sustained.

BY MR. SCOTT:

Q Did you -- did you -- did you know that he had a car?

A He called me when he was about to get the

car.

MS. ZMROCZEK: Again, objection, Your Honor; hearsay.

BY MR. SCOTT:

Q You can't talk about what he said?

A Okay.

Q What I want ask you is, at some point, did you become aware that he had a black Lexus?

A Yes.

Q And you know about how long he had it at the time this August 7 date comes?

A I'd give it probably about a couple of months.

Q So he hadn't had it long?

A No.

Q Okay. But -- but you received a phone call from him?

A Correct.

Q Do you remember that?

A Correct.

Q And without saying what he said, was -- were you concerned by the nature of the phone call?

A Yes.

Q Okay. And -- but you were in Florida, so there wasn't a lot you could help him with?

A Yeah. I was in Florida. I called my baby brother right after I got off the phone with him.

Q But the phone call from Antrone concerned you. Did -- did you ask him to put anybody else on the phone?

A Yes, correct.

Q And who did he put on the phone?

A I'm not familiar with the gentleman's name, but the gentleman got on the phone and asked about a ride --

MS. ZMROCZEK: Your Honor --

THE WITNESS: -- from Charleston to Columbia.

BY MR. SCOTT:

Q Let me ask you this --

MS. ZMROCZEK: Okay.

BY MR. SCOTT:

Q -- do you recognize this guy right here?

A Yes.

Q Who is that?

A That's the gentleman who was staying in the hotel with my brother and Summerville.

Q Okay. So did you know him to live with your brother in Summerville at one point?

A At one point, in Summerville and a trailer.

Q Had you spoken with him before?

A Yeah. I seen him before; spoke with him.

Q Okay. When he was living with your brother?

A Yes, they were dealing. Yes, sir.

Q What do you call him? Do you remember his name?

A Not close hand like that, no, sir.

Q When you got on the phone with the individual who was with your brother, did you recognize his voice to be this individual?

A It been a while since I heard his voice. But he was basically saying, you know, how my brother owed him money.

Q Okay.

A So I was like, How is that? My brother get a check every -- every month.

Q Okay. What did you -- what did you, if anything, did you tell this person on the phone?

A I told him, I said -- when he said about the brother owing him money, and I said, "Give -- you need to let my brother go."

He was like, "We'll see."

I was like, "You don't want me to come see you. You don't want me to hunt you down. You better -- you know what I'm saying? It's little different for me or somebody else hunting you down."

Q Did you stress to him that he needed to let your brother go back down to Charleston?

A Correct.

Q Okay. What was the tone of his voice? Did he seem cooperative or was he --

A More like laughing; like brushing it off.

Q Okay. Was that frustrating to you?

A Correct. Yes.

Q Okay. And did he ever indicate that he was going to let him go or was he still just asking about the money that your brother owed him?

A He mention something about tires, that my brother owed him some tires or something like that. And then he hung up on me.

Q He hung up?

A I called back. No answer. That's when I called my baby brother.

Q Okay. So after he hung up on you, you're trying to call back and there was no answer?

A No answer.

Q And that's the extent of it?

A Yep. I called my baby brother. He's in Charleston.

Q Okay. This guy here, is that the one you were talking about that was charging Antrone the 600

bucks to live in the trailer for -- what was it? Two weeks?

A Two weeks. He didn't even stay the whole month.

Q Was it him?

A He does look familiar.

Q Okay. But you remember them living together?

A Correct.

Q All right.

Anything else you recall about that phone call?

A Not too much. I mean, it was short and brief. You know what I'm saying? When he hung up, nobody answered back.

Q Okay. And it was later you found out the Antrone was in the hospital?

A In the hospital.

Q Answer any questions Aimee has for you.

THE COURT: Ms. Zmroczek.

MS. ZMROCZEK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Mr. Dubose, right?

A Yes, ma'am.

Q You care about your brother, right?

A Yes, ma'am.

Q Called the police as soon as you got the phone call you were so worried about him, right?

A I called my brother, baby brother.

Q You called your other brother?

A Yes.

Q But not the police. Where was your other brother?

A In Charleston.

Q He was in Charleston?

A Yes.

Q So he had family in Charleston?

A Yes.

Q And he could function on his own, had his own car?

A Who: My baby brother or Antrone?

Q Antrone.

A Yes.

Q Had his own car? Made his own decisions --

A Correct.

Q -- right? He was his own man, right?

A Correct.

Q All right.

I want to talk to you about this testimony that you've given?

A Okay.
Q The first time anybody ever asked you about this case, February 17, 2022, correct?
A Correct.
Q You met with Mr. Scott?
A Okay. Yes.
Q You met with Mr. Whitmire?
A Correct.
Q And you met with Mr. Ace, who I don't see in here, who is an investigator with the -- the Richland County Solicitor's Office, correct?
A Okay. Yes.
Q The first time you ever made a statement, February 17, 2022, right? You -- what year was that that you said that -- that he was renting a trailer in Summerville for two weeks for $600?
A Probably about 2017.
Q Okay.
A 2017, 2018, somewhere in that ballpark.
Q And how many times did you talk to your brother that night?
A I talked to him before he left Charleston to tell him nobody takes an Uber from Charleston to Columbia. I said, "I told you don't do it."
Q Who was taking an Uber?

A Young man right there was taking an Uber from Charleston to Columbia.

Q All right.

A And I told my brother don't do that even though it was his friend.

Q Okay. So it's your testimony that on August 6, they took in Uber?

A Well, he was supposed to been the Uber.

Q So he was a Uber driver?

A But not registered with Uber.

Q Okay. So when you talked to your brother, he was in Charleston?

A Well, first time I talked to him, he was in Charleston.

Q Okay. And then when was the next time you talked to him?

A He was in Columbia.

Q And how many hours later, minutes?

A Not quite sure on that. But he was asking me, like, was I still in Columbia? Was I home? That was basically why he kept calling me, saying, "Are you home?"

Q So you live --

A I'm in Columbia.

Q So you live in Columbia?

A Correct.
Q So any reason why your brother couldn't come live with you?
A Yes. I've got eight kids.
Q You've got eight kids?
A Yes.
Q But if your brother came to you and said, "I'm homeless. I need a place to stay," what would you do?
A I would have to get him a place. That's no problem.
Q You what?
A I can get him a place. There's no problem. We've got places in the country.
Q Get him a place, no problem --
A Yes.
Q -- right?
A Correct.
Q What time was that last phone call you had with him?
A The time of day?
Q Yes.
A It was evening, nighttime, evening time.
Q So he only called you and told you he was in Columbia that last time?

A Yes.

MS. ZMROCZEK: Okay. No further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q When he called you from -- when he was Charleston, he was saying, "I'm having to go to Columbia to take this guy to Columbia," is what you testified to?

A Correct.

Q And you said that's a bad idea?

A Correct.

Q He said, "But the guy's my friend"?

A Correct.

Q And then the next time you hear from him, he's saying, "They won't let me come home"?

A Yeah. "They won't let me come home for" -- he owed money for a tire.

Q And you're saying, "I told you so"?

A Yep.

Q Because that's what you warned him about and it happened. Because you've seen him get used and abused before?

A Yes.

Q Is he doing all right now? He's living in

Moncks Corner. Is that what I understand?

A Yes, he finally just took my advice and went home back to our grandmother's house.

Q Okay. Have there been other times when he was living in his car and other places that -- or paying rent?

A Two weeks. You make enough money to pay for a trailer by yourself. So you don't have to sit there and rent from nobody else. You can go stay at an Extended Stay with the money you have by yourself.

Q And on the particular day when he called in, you just happened to be in Florida working on a project whenever he's saying, "I need help here in Columbia"?

A Yes.

Q Otherwise, you would've come running?

A Yes. Because I don't call polices.

Q You don't call the police?

A Yeah. Marine Corps. I specialize hand-to-hand combat. I don't call police. Never did. Never had to.

Q All right.

But you called your younger brother to go check on him?

A Yes, the other one I trained. He ain't calling the police.

Q Where -- where in Charleston did y'all grow up?

A Well, the city -- little town we grew up is called MacBeth.

MS. ZMROCZEK: Your Honor, I would object. This is outside the scope of redirect.

THE COURT: Overruled.

THE WITNESS: Well, the area I grew up is called MacBeth. It is all family-based. It was like a bad area. You know what I'm saying? So when you graduated from high school, you got to get out of there. Because either you sell drugs, you're going to be on drugs, or you're going to get shot and killed.

So I moved from there to an area called Lumakin [phonetic]. My other brother, he moved to a place called Llewellyn. Which those are two bad areas in Charleston, but it's better than where we grew up at so...

BY MR. SCOTT:

Q So growing up, you were like you need to take care of things yourself, you don't call the police?

A No.

Q All right.

I think that's it, Dexter. Appreciate it.

A No problem.

MS. ZMROCZEK: Just very briefly, Your Honor.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q When you talked to your brother in Charleston, did he tell you that -- that Ms. Jones had paid to have his car fixed?

A No.

Q He didn't tell you that?

A No.

Q When your brother got out of the hospital, did you find him a place to live here in Columbia where you live?

A I wasn't here in Columbia.

Q You weren't here in Columbia?

A No. He didn't let me know he was in the hospital. I found out he was in the hospital with my baby brother.

Q You called the -- when you talked to them in February 17, 2022, for the first time, did you tell them what phone number he called from?

A No. I don't think I could remember a phone number precisely from three years ago as much as he changes his phone number.

Q He changed his phone number a lot, right?

A Yes. But I answer every phone call. So I ain't dodging bill collectors or women, so I can answer my phone.

Q And police never called you back in 2019 to ask you what time these phone calls were?

A No. The police ain't called me.

Q They never called you actually, did they?

A The police?

Q Uh-huh.

A No, not that I recall.

Q Thank you. No further questions.

A All right.

THE COURT: Thank you, sir.

Mr. Dubose, you may step down.

THE WITNESS: Y'all have a blessed day.

THE COURT: Next witness.

MR. SCOTT: The state calls George Potash.

THE COURT: Just stand and get a little stretch while we are waiting for the next person to join us.

THE CLERK: Sir, could you stand right over here?

THE COURT: Don't swear him in until we get finished stretching.

THE CLERK: Okay.

(Pause in proceeding.)

THE COURT: Okay.

THE BAILIFF: Raise your right hand.

THE CLERK: State your full name, please.

THE WITNESS: George Daniel Potash.

THE CLERK: Could you spell your last name, please?

THE WITNESS: P-o-t-a-s-h.

THE CLERK: Do you solemnly swear the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat right up there.

THE BAILIFF: Watch your step. Speak into the microphone.

GEORGE POTASH

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Investigator Potash, you're with the City of Columbia Police Department?

A Yes, I am.

Q August 7, 2019, did you respond to a crime

scene at 300 Elmwood Avenue?

A Yes, I did.

Q Okay. That's been testified as the Randolph Cemetery. Does that sound familiar?

A Yes.

Q You know about what time you got there?

A My arrival time -- my notification time was 9:07. I got there about 9:28 in the morning.

Q And at that time, was the victim still on the scene?

A No.

Q He had already been taken away?

A Yes.

Q What is your initial -- what are your observations when you first get there?

A Basically when I arrived on the scene, I saw a black Lexus parked in a back corner of a cemetery. The trunk had been removed and was laying off to the side.

Q Showing you State's 3 and 4. Is that what you are talking about?

A Yes.

Q Here's the Lexus and here's the trunk after the lid had been removed?

A Yes.

Q Okay.

A As I stated, the -- the victim was not there. The crime scene tape was up. So they had already secured the perimeter. And it was -- the temperature was fairly hot that day. And it's clear skies, bright sun.

Q Okay. Do you remember if it was a hot morning? Do you remember that?

A Yes. It was fairly hot, yes. I had it notated in my report.

Q Okay. All right.

Continue.

A From my -- from my initial observations, that was pretty much it. There was no one in or around the car at the time. As I stated, you know, the victim was gone and the car was standing at that location.

At that point, myself and another crime scene investigator, Watson, began searching the area and taking photographs.

Q Okay. Do you have any -- there's been some talk on cross-examination. Do you remember a bunch of clothes or anything laying around on the ground outside the car or debris of any -- did you --

A Well, the debris -- the debris seemed to be mostly the trunk and the -- as I remember it, the trunk

and then there was some like what appeared to be part of a gas cap and some burned cloth.

Q Okay. All right.

And where did you note -- notice the gas cap?

A It was laying on the ground near the vehicle.

Q This is State's No. 5. Is that what you're talking about?

A Yes.

Q And as you -- you walk around, what else are you -- what else are you seeing as far as the car is concerned?

A Let me see. Well, the key fob was located on top of the car. One of the patrol officers had placed the key fob to the car on top of the vehicle.

Q Okay.

A And let's see. We did notice some reddish stains on the rear bumper.

Q Okay.

A And, of course, there was a partially burned or melted gray cloth that was located in the mouth of the gas tank on the car.

Q Okay. Is this what you're talking about, State's No. 8?

A Yes.

MR. SCOTT: Okay. Judge, I'm going to --

these have already been admitted, of course. But I'm going to publish and go ahead and hand over 7, 8, 10, 11, and 16 to the jury.

BY MR. SCOTT:

Q Okay. So your main job in this case was to document the crime scene as you saw as it was presented to you?

A Yes. Yes.

Q Okay. Did you collect any other items that you recall?

A What we did was in regard to the car, since we wanted to take it back to 715 Bluff Road for processing. Because the exterior surface of the car we were concerned about lost possible evidence on the exterior, so we did process the exterior of the car for prints. And then we -- because the trunk lid had been removed, we taped over the trunk area to prevent anything from being blown out during transport.

Q Okay. Did any of the evidence -- did you collect that gas cap?

A Yes, I did. In fact, let me see, at 1304 hours. So at 1304 hours, melted black plastic believed to be a gas cap from vehicle found near the ground near driver-side rear of the vehicle.

Q State's 40, is that -- you recognize that?

A This is an evidence envelope with my writing. It's still sealed. And it's labeled No. 2, melted black plastic, believed to be vehicle gas cap from ground near driver-rear corner of vehicle, 1304 hours.

Q Okay. You can open that up.

A Yes. That's what I collected.

Q Okay. And that's how it appeared --

A Yes.

Q -- that day when you --

A Yes. In fact, the writing is the same as in the photos until -- until one click.

Q All right.

But since then, on this particular occasion, you were there to document the crime scene as it was by the time you got there?

A Yes.

Q And then they hauled the car off while you were there?

A Yes.

Q Okay. Thank you very much.

Answer any questions Ms. Zmroczek has for you.

MR. SCOTT: Oh, did I admit that? Your Honor, the state does offer -- he identified it -- State's No. 40 for admission into evidence.

MS. ZMROCZEK: Forty? Is that 40?

No objection, Your Honor.

THE COURT: It's admitted.

(State's Exhibit No. 40 is admitted into the record.)

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good morning.

A Good morning.

Q You are a crime scene investigator, right?

A I am a patrolman assigned to the crime scene investigations unit.

Q And what does that mean?

A That means I have received training in the identification, documentation, and collection of evidence as directed by the investigator at the scene.

Q And what kind of training did you receive to -- to do that?

A I have received training from both private vendors, training through the South Carolina IAI, which is International Association for Identification, which is a professional organization for crime scene, as well as reading and training through the department itself.

Q And -- and you and I have been in this position quite a few times. How long have you been

doing this?

A Unfortunately, about 10 years.

Q About 10 years. And what's the importance -- tell the jury what's the importance of a crime scene investigator. Why is your job important?

A Basically it's to make sure that -- or to try and collect as much evidence as possible in a way that is usable at a later time for laboratory testing, which we do not do. Anything that's laboratory tested would be submitted to, like, the SLED lab of Richland County.

Q SLED. South Carolina --

A State Law Enforcement Division.

Q State Law Enforcement Division. Good lord. So when you collect evidence and you need it tested, Richland County has their own lab?

A Yes.

Q But Columbia doesn't have their own lab?

A Correct.

Q But you -- but there's no problem with you sending any evidence you want, not you, whoever's the lead investigator, right?

A Well, there are -- there are limitations on evidence. They do -- SLED does limit the quantity of evidence that we can submit per case as well as they actually have limitations on the testing that they can

do. There's been times when we've had to submit evidence to the FBI lab.

Q So -- so in addition to having SLED as a resource, you can also submit to the FBI?

A Yes.

Q They do fingerprints?

A Yes.

Q Both SLED and the FBI?

A Yes. We also -- we also do fingerprints as well.

Q Oh. You do fingerprints?

A We have -- we have an AFIS operator and we have the ability to run latent prints through AFIS.

Q So there is no even need -- if it's fingerprint evidence, there's no need to even have to contact SLED, you could do that in-house?

A Yes.

Q Okay. And you -- so -- so part of your duties as a crime scene investigator, the first thing you want to do when you get to a scene is document, right?

A Uh-huh. Yes.

Q Tell the jury what that means.

A Basically what we're doing is we're documenting the -- the crime scene through written

description, through our reports, as well as through photographs.

Q And in this case, would it surprise you to know that -- well, I think you have it written down in your report there on page 1. You took 170 photographs, correct?

A Yes.

Q 170?

A Yes.

Q And you photograph things that -- because you don't know whether they're going to be important or not, right?

A Yes. We photograph pretty much everything regardless of what it is.

Q And so I'm going to show you State's 17. That's one of the photographs that you or the other --

A Yes.

Q -- crime scene investigator took?

A Yes.

Q Okay. And there were two of y'all that day?

A Yes.

Q Okay. So right off to this other side over here right in the bushes, you recall taking photographs of shoes and other items?

A Yes. They appeared to have been there for a

while.

Q Okay. There's a homeless population that -- that promulates --

A Yes.

Q -- in that area?

A Substantial.

Q Substantial.

Okay. You documented -- so -- so you write reports -- explain to the jury how you kind of document what you do and then -- and then put it all into your report?

A Basically, we start off by photographing the scene. Then we search the scene for anything that we can find that pretty much relates to the information we're provided by patrol investigations. And then we transcribe that information into our report.

Q So are you taking notes and then you put it into your report or you have a recorder? How does -- how does that work?

A Generally just note. Just rough-written notes.

Q And -- and certainly the collection of evidence can be important in identifying any possible perpetrators, right?

A Yes.

Q And also, excluding any possible perpetrators, right?

A Yes.

Q And you said y'all have your own fingerprint lab?

A Yes.

Q And you took extensive fingerprints in this -- in this case, right?

A Yes.

Q Let's start with L1. You took print from the driver's-side rear quarter panel near the gas tank door exterior?

A Yes.

Q So basically right where the gas tank is?

A Yes.

Q Right where someone would have to use their hands to open it up and --

A Yes.

Q -- and do whatever they want to do. And that was important because of the damage to that -- to that side of the area, right?

A Yes. Specifically the -- the rag inserted into the gas tank.

Q And I want to talk about kind of fingerprints for a second. So if -- if you had an item -- sorry.

I can't see.

If you had an item such as a rag, how easy -- how easily can you get fingerprints off of a rag?

A Impossible.

Q Impossible, right?

A Under these circumstances, absolutely impossible.

Q Okay. How -- what kind of surfaces are good for getting fingerprints, for example, the car?

A Basically, when we're looking for fingerprints, you want surfaces that are smooth without a lot of texture, that are not contaminated with dirt or chemicals. Basically, the ideal surface would be a smooth pane of clean glass. And then everything goes down from there.

Q But a car, pretty good surface, correct?

A A painted car surface without a lot of dirt on it would be an ideal surface.

Q Okay. And so I want to keep going.

L2, prints from the driver's-side rear corner. So you took -- there were several different prints that you were able to lift, right?

A Yes, I lifted a number of prints.

Q Explain the lifting process. If I walked up to a glass and had my thumb here, are you going to be

able to see that? What do you do to enhance that?

A Well, in order to search for a print, first thing we would do is, in fact, use a flashlight, turn it on, place it at an angle. And a print that's on a smooth flat surface, you're generally going to be able to see something to indicate that there's -- there's a presence of some kind of a smear or even a print.

There's different -- different levels. You can have what is called an impression, which is an artifact left behind by a palm or a finger, a foot, whatever, that doesn't have any ridge detail. That's simply an impression.

What we refer to as a print is something that would have substantial ridge detail that would allow us to make an identification.

Q So when you go to lift prints, you want to make sure you are lifting something that could be usable, right?

A Yes. That's -- that's why we would search using lights and visual searching before we started dusting.

Q And so than you -- you do an additional dusting, like tell the jury about what that is.

A Dusting is the use of a finely-ground powder. It could be either a -- a magnetic -- a volcanic dust

which is nonmagnetic. And it's really, really fine dust. Then they also make a version that is magnetic, which is a ceramic-base material. But it is very, very, very fine dust. And it settles onto the surface and it sticks to the oils from the skin that are left behind when somebody touches a surface.

And not everybody leaves fingerprints. There's a substantial portion of the population that does not secrete enough oils to leave prints. So the presence of prints only indicates that a person was there. The lack of fingerprints doesn't exclude people because they may not even leave them.

Q Right. And so after you -- so in this case, you dusted after you were able to identify some good prints?

A Yes.

Q Okay. And then how do you get those prints to evidence?

A What we will do is -- excuse me. Once we dust the surface and we have a usable print, we would apply clear plastic tape over the surface. And it's usually a low tackiness so it can be peeled back off of the surface easily without destroying the print. But we place that tape over the print. We pull it back from the surface and apply it to a clean white card.

And on the back of the card is information on the case and the print, who lifted it, where they lifted it from. But the print itself is protected on the bottom by the -- by the paper card and on the top by the clear plastic tape.

Q And so when you're talking about prints, looking at the fingerprints, you have different little patterns, right?

A Yeah. Basically, little designs. And they've been determined to be statistically unique.

Q And -- and statistically unique to people, right?

A Yes, yes, to individuals.

Q And that's how you help identify people?

A Yes.

Q And it's not just fingerprints. You can also do palm prints as well, right?

A Yes.

Q So there -- these lines that are on our fingers also carry through to our hands?

A Yes.

Q So if I touch and I'm holding on to something, you would do the same --

A Correct.

Q -- process?

Okay. And when I say, like, L1 on page 2 of your report, that was actually a print that you lifted and put on a card and did all these things?

A Yes.

Q That was L1, L2. We went through driver's-side rear quarter panel. Looks like L1 and L2 are two different prints --

A Yes.

Q -- right?

A Yes.

Q So there were multiple -- you can tell that there were multiple prints?

A Yes.

Q Okay.

A I -- in fact, I believe, if I remember correctly, I lifted nine prints and CSI Watson lifted two.

Q So a total of 11 prints?

A Yes. If I --

Q Okay.

A -- if I remember correctly, yes.

Q Okay. And so -- so just yeah, really quickly. L3, print from driver's-side rear panel above rear driver's-side door exterior?

A Yes. Everything we took was on the exterior

of the vehicle. We did not enter the vehicle. We were just trying to -- basically we were in a position where we were going to have to transport the vehicle. And the -- the method of transport is on the back of an open tow truck. So if we were to simply put it on the tow truck and ship it, the prints could be degraded through friction, through dust in the air hitting it and causing the print to be damaged?

Q So you wanted to do all of this --

A So we wanted to preserve the evidence -- we wanted to preserve the best evidence possible.

Q Okay. And then, so L4, again, a different print from the rear panel above the rear driver's-side door?

A Yes.

Q L5, print from the driver's-side rear quarter panel between that gas tank door and the rear driver's-side door exterior?

A Yes.

Q Print from driver's-side rear door exterior?

A Yes. That is L6.

Q Print from rear quarter panel between gas tank door and rear driver's-side door exterior?

A Yes. That's L7.

Q Okay. Print from the driver's-side rear

quarter panel, gas tank exterior?

A Yes, L8. And then, L9 was the print from the driver's side of the rear windshield exterior.

Q Okay. And then, LP-1 and LP-2 were the two that the other --

A CSI Watson.

Q -- other -- CSI Watson, but you have the same --

A Yes. We consolidated the report.

Q Okay. And so those were from the passenger's-side rear-door exterior and the passenger's-side rear-door-window exterior?

A Yes.

Q And after you collected those, what did you do with them?

A They were submitted to CSI Watson, who is our latent print examiner --

Q Okay.

A -- to be entered into AFIS and examined.

Q Okay. Do you know if that was done?

A I do not know. I would expect so. But I do not know.

Q Okay. All right.

Let's go back up to the top of your report. You have B1 and B2?

A Uh-huh.

Q So in addition to -- you're not just trained to collect fingerprints, you're trained to collect all kinds of any potential evidence, right?

A Yes.

Q So what was -- tell the jury what B1 and B2 were.

A The way that I labeled my evidence is I use numbers for physical objects that I'm going to collect. For example, this was Item No. 2. That's the gas cap. The L that I use in front of a number indicates latent, which is a print. And then, I use B as biological. So B1 is Biological Sample No. 1. B2 is Biological Sample No. 2.

Q And you've been doing this for 10 years, right?

A Yes.

Q And so you are trained to identify what could potentially be blood.

A Yes. In this case, we used what's called Hemastix. It's a technique that I was trained in by the FBI evidence recovery team at an IAI conference. What it is, is it's a small test strip that's used to determine the presence of -- the presence of blood. It does not differentiate between animal or human blood.

It is not an absolute. It is a field test. It simply indicates the possible presence of blood and that we should collect a sample to submit it to a lab.

Q What would the lab do? Why would you collect a potential substance that would be blood?

A Well, the first thing they would do, of course, is confirm whether or not it is blood, then what type of blood, the wet bench work. And then, they would submit it to the DNA lab to have a DNA analysis conducted.

Q And DNA -- everybody has DNA, correct?

A Yes.

Q Everybody, except for identical twins, have their own DNA structure?

A Yes.

Q So DNA is another way to help identify items or persons that were potentially involved --

A Yes.

Q -- or at a crime scene?

A Yes.

Q Let me ask you about after they towed the car, they executed an additional search warrant, right?

A Yes.

Q Were you involved in that as well?

A No, I was not.

Q Was that someone else?

A Yes.

Q So you said you did not go into the interior of the car at the time because you wanted to take the best evidence on the outside?

A Yes, because it's -- it's -- the exterior evidence is what is considered transitory. It is evidence that can be lost or damaged. And there is a -- basically a timeframe on collection. In addition, in this respect, we had -- especially like around the gas tank and everything, the benzene fumes from, you know, the gasoline. Gasoline fumes tend to have an effect on fingerprints and DNA both where it degrades them. So...

Q And then so you're familiar with cell phones?

A Yes.

Q And people use their fingers and hands --

A Yes.

Q -- on their cell phones, right? Is that another potential source for fingerprint identification?

A It can be. A lot of times with cell phones, because you're not pushing and holding, you tend to put your finger on and slide, a lot of what we think would be a good print on a cell phone isn't. But yes, yeah.

It's a potential source.

Q And when you're sliding on the front, what are you doing on the back?

A You could be holding it. You could either hold it interdigitally, such as this. And for the most part interdigital, there is no database for that. Basically interdigital is -- is not logged. The thing that we -- we database are palm prints and actually fingerprint tips.

Q And when you dust for prints -- let me ask it this way: Is there a way that you -- can you -- can you get DNA from pants?

A You can.

Q So what -- if you were -- when you dust for prints, does that kind of mess up any other biological material?

A It can.

Q So --

A It's -- it's not a -- it's not a guarantee. But the dust is yet another contaminant. In addition, you have any surface material that's already on the car, liked dirt and dust and stuff would be considered a contaminant for DNA as well.

Q So sometimes before you test for fingerprints, you swab something and then you can lift

the fingerprint, right?

A It's -- it's really a choice, right? If you got a good print, the fingerprint database is much, much larger than the DNA database. So when you have -- when you're put in a position where you have to make a choice on should I lift the fingerprint or should I take a swab, I would probably take the print first because I have a better chance of identifying a person.

Q And that's the whole purpose of collecting --

A Yes.

Q -- is to identify?

A Yes.

Q And you submitted -- you and the other CSI submitted 11 prints that you felt were usable --

A Yes.

Q -- in this case?

Thank you.

MS. ZMROCZEK: No further questions, Your Honor.

THE COURT: Anything further?

MR. SCOTT: Nothing from the State.

THE COURT: Okay.

Thank you. You may step down.

MR. SCOTT: Judge, would now be a good time for a morning break?

THE COURT: Yep. Absolutely.

Ladies and gentlemen, we'll take a break now. Do not discuss the case.

(The jury exits the courtroom at 10:43 a.m.)

THE COURT: How many more witnesses are you going to have, you think?

MR. SCOTT: I think -- well, what I'd like to do if the Court would indulge is have the codefendant just to have her invoke her Fifth, if she intends to do that. It's obviously her personal right to do.

THE COURT: All right.

We can do that.

You object to that, Ms. Zmroczek?

MS. ZMROCZEK: Not at all.

THE COURT: Mr. Forney?

MR. FORNEY: Your Honor, I do object. She is mentally ill, low IQ and I think would struggle with some of the questions.

THE COURT: I know how to handle those -- that kind of person. So we'll see what -- she sounds about the same as everyone, except Mr. Scott and Ms. Zmroczek. Bring her out and see -- bring her up and let's see.

MS. ZMROCZEK: Occasionally Ms. Zmroczek.

Let's be honest.

THE COURT: Aside from that lady, how many more do you think you have?

MR. SCOTT: Lead Investigator Montgomery. I will probably wrap it up with him.

THE COURT: Ms. Zmroczek, be ready to go. How many are you going to have?

MS. ZMROCZEK: One.

THE COURT: That means none, right?

MS. ZMROCZEK: No.

THE COURT: Maybe one.

MS. ZMROCZEK: Maybe one.

THE COURT: Okay. All right.

We will take 10 minutes. And then we'll talk to Mr. Forney's client before we proceed if we can get her to come up here.

(A recess is taken.)

THE COURT: Okay. So we're ready.

Where's the lady Ms. Jones and -- and the lawyer?

It's amazing how they disappear as soon as you -- they disappear as soon as you leave. Anything to delay the process.

You have another witness ready to go?

MR. SCOTT: I do.

THE COURT: While we -- Ms. Jones is not here.

You can bring the jury.

THE BAILIFF: Yes, sir.

UNIDENTIFIED SPEAKER: Ms. Jones is coming, sir.

THE COURT: Pardon?

UNIDENTIFIED SPEAKER: Ms. Jones is coming.

THE COURT: Hello, Ms. Jones. Come stand right here in front of me. Stand over here.

Mr. Forney, as well. Right there.

Swear Ms. Jones in.

THE CLERK: I'm going to swear you in. Would you raise your right hand? State your name.

MS. JONES: Michelle Latoya Jones.

THE CLERK: Say it again.

MS. JONES: Michelle Latoya Jones.

THE CLERK: You swear to tell the truth, the whole truth and nothing but the truth so help you God?

MS. JONES: Yes.

THE CLERK: Thank you.

THE COURT: All right.

Ms. Jones, how are you doing today?

MS. JONES: I'm doing fine.

THE COURT: All right.

And where are you from?

MS. JONES: Charleston, South Carolina.

THE COURT: And how long have you -- who came here to court with you today?

MS. JONES: My auntie.

THE COURT: And where is she from?

MS. JONES: She's from Charleston.

THE COURT: Did she come here from Charleston?

MS. JONES: Uh-huh.

THE COURT: Do you live in Charleston now?

MS. JONES: Yes, sir.

THE COURT: And how old are you?

MS. JONES: Ever since I was a baby.

THE COURT: Yeah. Me too. But when were you a baby? When were you born?

MS. JONES: I was born in Charleston, South Carolina, MUSC.

THE COURT: On which day?

MS. JONES: 5/22/1985.

THE COURT: That makes you how old now?

MS. JONES: I am 37. On May -- on the 22nd, I'll be 38.

THE COURT: Do you have any babies, children?

MS. JONES: Yes. I have three girls.
THE COURT: And who do they live with?
MS. JONES: They live with my people: my family, my relatives.
THE COURT: Do you live here with them?
MS. JONES: No.
THE COURT: Do you live there by yourself or with somebody else?
MS. JONES: No. My family taking care of them. They got custody of them.
THE COURT: And who do you live with?
MS. JONES: I live with my Auntie Beverly.
THE COURT: Is she here today?
MS. JONES: Yes.
THE COURT: Which one -- which one is she? That's your auntie, and her name is?
MS. JONES: Beverly Rivers.
THE COURT: Beverly Rivers. Rivers? You said Rivers?
MS. JONES: Uh-huh.
THE COURT: Are you all from North Charleston?
MS. JONES: Uh-huh. Yes, sir.
THE COURT: You ever attend Royal Baptist Church?

MS. JONES: Yeah.

THE COURT: And how did I know that?

MS. JONES: I don't know.

THE COURT: I'm smart. I can just figure things out.

Do you know Nelson Rivers?

MS. JONES: Yeah.

THE COURT: How do you know him?

MS. JONES: He's my boy cousin.

THE COURT: He's your what?

MS. JONES: Boy cousin.

THE COURT: What did she say?

MR. FORNEY: Her boy cousin.

THE COURT: Boy cousin.

All right.

He's the preacher at the church there, too, isn't he?

MS. JONES: Yes.

THE COURT: So you're charged in this case too? You -- they charged you with committing a crime?

MS. JONES: Yes.

THE COURT: And Mr. Forney is your lawyer?

MS. JONES: Yes.

THE COURT: And the solicitor wanted me to

ask you whether or not you plan to testify in this case.

MS. JONES: I plead the Fifth. No answer.

THE COURT: "I plead the Fifth. No answer." How did you figure that out?

MS. JONES: Because that's what God want me to do.

THE COURT: That's what? That's what what?

MS. JONES: That's what God want me to do.

THE COURT: That's what God wants you to do? I see.

All right.

And are you on any kind of medication now?

MS. JONES: Yes.

THE COURT: What -- what are you on?

MS. JONES: I'm on Depakote. I'm on Lisinopril. I'm on Lisinopril, high blood pressure medicine, Depakote. I'm on high -- Metformin.

THE COURT: I'm on some of that, too. Metformin, that's a blood thinner?

MS. JONES: No. Metformin for diabetes.

THE COURT: Diabetes?

MS. JONES: Yeah.

THE COURT: Okay. That's right.

So you plan to plead the Fifth and -- and not testify in this case. You're going to have your own trial; is that right?

MS. JONES: Yes.

THE COURT: So have you ever been in a mental institution or anything like that?

MS. JONES: Yes. I was in a mental institution in Columbia a long time ago. Three times, four times, five times.

THE COURT: So are you're pretty normal if you take all that medicine?

MS. JONES: I tried every medication they tried. They gave me everything. I tried medication they prescribed for me. Didn't work. It didn't at all. I tried every last one of them ever since I was a little kid. It's just --

THE COURT: Well, it sounds like something's working now.

MS. JONES: Yeah. The medication they finally found was the right medication for me.

THE COURT: Which one do you think is working?

MS. JONES: Depakote and I take Ativan.

THE COURT: All right.

So, Mr. Forney, did you request the -- any --

mental evaluation in this case?

MR. FORNEY: I did. And she was found competent to be tried in 2020. But I don't agree with those findings, and I want to have her evaluated again.

THE COURT: Well, did -- did a judge make a determination on her?

MR. FORNEY: No, they did not, Your Honor.

THE COURT: Did y'all present the report from the DMH to a judge?

MR. FORNEY: I want to have her privately evaluated before we do that.

THE COURT: That's not -- you didn't answer my question.

Did you all present the report from DMH to the judge to make the determination?

MR. FORNEY: At that point, no, sir, I didn't.

THE COURT: Well, now, the judge orders that a person be evaluated by the Department of Mental Health and that a report be issued for the judge to make a determination as to whether or not she was competent or not. You can't make that determination.

MR. FORNEY: Nor would I try to.

THE COURT: That's a judicial determination. In order for the judge to make a determination, the report must be presented to the judge that's written by the mental health people. That's exactly what we did with Mr. Dixon.

We did that yesterday, didn't we, Mr. Dixon?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That's right. That's the way it's supposed to be.

The lawyer can't decide, even though Ms. Zmroczek would love to and Mr. Forney and all. A judge has to make that decision. And it's amazing to me, particularly here in Richland, how these reports are received by the lawyers and just put in a file some place when the order is made by the judge.

In the case of Mr. Dixon, Judge Lee ordered that he be evaluated. The statute says the judge -- when a judge finds it necessary for the person to be evaluated, to get evaluated. The report comes back to the judge. The judge does a hearing, even though around here you-all like to get the judge to waive the hearing, and you-all decide by consent. That's a judge's determination as to competency or not. And that's what needs to

be done in this case.

Apparently, you said she was evaluated in 2020, but you think you want her to be privately evaluated. That's for a judge to decide as well. You can do it, but it doesn't control the process.

MR. FORNEY: Yes, Your Honor. And to clarify, I just think with the amount of time that's gone by since, it's -- well, it's a good idea.

THE COURT: Well, it sounds like she's gotten better.

You think you've gotten better or worse or how do you stand?

MS. JONES: I've got better.

THE COURT: That's right. That's what I think.

MR. FORNEY: I agree that she has, but she also suffers from a low IQ.

THE COURT: Yeah.

MR. FORNEY: And does -- and needs a lot of explaining to understand basic legal concepts.

THE COURT: Yeah. Well, the threshold for capacity to stand trial is -- is that the word, capacity? Is it?

MR. FORNEY: Competent.

THE COURT: Competency to stand trial, it's a pretty low threshold.

MR. FORNEY: That's true.

THE COURT: As long as you can help the lawyer out in preparing your defense and you understand the charges against you, you know, then you -- for the most part you're competent to stand trial.

Well, Mr. Scott, so with this case, have you made a plea offer to the young lady?

MR. SCOTT: I think I had a hand in helping her make bond, and with the understanding that I would be -- she's given a full confession that's recorded. I --

MR. FORNEY: That's not my recollection, Your Honor.

THE COURT: Well.

MR. SCOTT: Can I speak?

MR. FORNEY: Of course.

MR. SCOTT: She's given a recorded statement to law enforcement implicating herself and the involvement, speaking to things that she would have no knowledge of. She was found in Hickory, North Carolina, with the defendant and brought back and interviewed, where she has implicated

herself along with the defendant.

It was always sort of my understanding that she would be testifying as a state's witness and then -- I don't know. This was scheduled February 20 for trial, and maybe a week or two beforehand Mr. Forney indicated that she would be pleading the Fifth under his advisement. Now I just want to make sure everybody is of the same understanding that I will be moving to put her on the trial docket as soon as possible. As you know, it's a 2019 case and I'm trying my --

THE COURT: Well, these are very serious charges. Like my man who's on trial here, Mr. Dixon, he's facing up to 30 years for attempted murder, up to 30 years for kidnapping, and some -- any mandatory minimum on Dixon's charge?

MR. SCOTT: I don't think so, Your Honor.

THE COURT: Yeah. But you can get up to 60 years in prison. How old are you now?

MS. JONES: 37.

THE DEFENDANT: 53.

THE COURT: 53.

You're 37.

So it's pretty easy to say, well, I'm not

guilty. I want to have me a jury trial. That's fine if you get found not guilty. But if you get found guilty, you're 53, you know, you might get a life sentence, especially -- it sound like you're not in too good a shape healthwise, and you have health issues.

So it's easy for everyone to say I want a jury trial, I'm not guilty, as if the jury is just going to automatically find people not guilty, but it depends on the evidence. And if you're found guilty, you know, you have some serious consequences.

And I'm talking more -- tell me that aunt's name back there again, your aunt. What's her name?

MR. FORNEY: It's Rivers, Your Honor.

MS. JONES: It's Rivers.

THE COURT: What's your aunt's name?

MS. JONES: Ms. Rivers, Beverly Rivers.

THE COURT: Beverly Rivers. I'm talking to Ms. Beverly Rivers more than anyone else in here today because, yeah, you can just say, "I want a jury trial. I'm pleading the Fifth. I'm not going to say anything." And when you have a jury trial, you don't have to testify. You can take

the Fifth, and Mr. Scott, he doesn't -- I mean, he -- he would love to -- obviously he picked out the guy he thinks is most guilty and put him on trial. And you can want a trial but, you know, you -- you might want to consider trying to figure out how to get out of this jam that you're in.

I don't know what her degree of culpability is. It's hard for me to believe that she would've -- she would've beaten the man in the head and forced him in the trunk and all that stuff. Sounds like she was just the third wheel here. I'm not sure what she did.

What is she accused of doing?

MR. SCOTT: Well, she was -- as Mr. Dubose testified, she was active in beating him and forcing him into the trunk.

THE COURT: She was -- she was out of control as well?

MR. SCOTT: Judge, this is just, as I previewed with -- with Gabbie, just an odd case --

THE COURT: Yeah.

MR. SCOTT: -- and just people who were kind of doing bad things to vulnerable people.

THE COURT: Well, you can have all these trials, and people can end up in prison for a long

period of time, or you can figure out a way that you can try to get out of this. And, of course, I'm not -- you know, I'll put a guy in prison a lot faster than I'll put a woman in prison, especially a woman that has three children.

And I'm not saying whatever should be an end result. But it's so easy to say, "Well, I'm going to take the Fifth. I'm not going to cooperate. I want me a jury trial. I'm thinking this is just going to go away." And then you have a jury trial. If you get found guilty, then you have some serious problems.

Ms. Beverly Rivers, and if she's got problems, you've got problems. And so you-all need to think hard. Who else do you have back there with you, Ms. Rivers?

MS. RIVERS: My husband and my son.

THE COURT: Your husband and your?

MS. RIVERS: My son.

THE COURT: And your son. You-all come from a prominent family. Y'all related to Nelson?

MS. RIVERS: His family is from (inaudible) in Charleston, South Carolina.

THE COURT: Your husband is related to Nelson Rivers?

MS. RIVERS: No.

THE COURT: Well, who's related to Nelson Rivers?

MS. RIVERS: I don't know who she knows, but we are not.

THE COURT: Okay. Well, Nelson Rivers is the head of the -- was the head of the NAACP in Columbia before he became a preacher. And then he became a preacher. And he's the one who led the march on the Capitol to take down the Confederate flag. He was the head man that led that. And he did so much speaking. Then he became a preacher.

And then he moved to Charleston, which is his home. And he became the pastor of Royal Baptist Church in North Charleston, which she said she knew about.

Is that right?

So I might call Nelson and say, "Nelson, what do you want me to do with your people?" If he's your people. But none of y'all know him, sounds like.

Except you.

MS. JONES: Yes.

THE COURT: I mean, I don't know. I'm just giving you something to think about. Our hands

are full already, and whether she testifies or not may not make a difference in this case, in Dixon's case, but it might make a whole lot of difference in your case, because it sounds like you're in a lot of trouble too.

MR. FORNEY: Your Honor, if Mr. -- if Mr. Scott wants to go on the record with a plea offer, we'll entertain it.

THE COURT: Yeah. You know, whatever y'all want to do. But this is a case from 2019. We've got a jury out, and we've got all these people here from Charleston. And if you all want to figure out what to do -- Mr. Scott can't handle two cases simultaneously. I mean, it seems as if y'all would have been thinking on this already. You know what I mean, Ms. Rivers -- Ms. Jones, you know what I mean, right?

A lot of people who -- everyone loves to say, well, this person's incompetent. They don't have good sense. You know, all of us have in a lot of ways the same amount of sense. You know, we all have positives and negatives.

And just like Mr. -- Mr. Victim there, Mr. Dubose, he has good sense, but you've got to pull it out of him.

Then Mr. Defendant here, Mr. Dixon, claimed he didn't understand anything. He's got good sense. So, y'all better figure these cases out because Mr. Scott will go one after the other. He'll call these cases, and either you're guilty or not guilty. But if you're guilty, you know, then the judge is ready to throw the hammer or do whatever. But you're facing a lot of time.

So I want you to do some hard thinking there, Ms. Beverly. Right, Beverly Rivers?

MS. RIVERS: Yes, sir. Well, since getting her in my custody, she left off medication, but she does take Risperdal and then Amitriptyline also with that.

THE COURT: You help her. You help her figure out the right thing to do in consultation with your lawyer. But when all is said and done, the lawyer will go home tonight.

MS. RIVERS: Yes, sir.

THE COURT: And your client may or may not go home tonight, or whatever the case is heard. So we're going to press on with this trial, and you all figure out what you're going to do or want to do. Because you know what the accusation is.

And then, Mr. Guy back here, Dubose --

Mr. Dubose, did she hit you? Stand up and talk.

MR. FORNEY: Your Honor, I object to this.

THE COURT: I'm talking to Mr. Dubose, not to you.

Did she hit you, Mr. Dubose?

MR. DUBOSE: Yeah. She kicked me in the trunk.

THE COURT: Sir?

MR. DUBOSE: Yeah.

MR. SCOTT: He said she kicked him into the trunk.

THE COURT: So what are you objecting to?

MR. FORNEY: He's not under oath. He's testifying.

THE COURT: I understand that. What does that mean? No one is --

MR. FORNEY: This can be used in a prosecu- --

THE COURT: -- under oath, rarely under oath in a guilty plea other than the person who's pleading guilty. That has nothing to do with what I'm talking about.

That's what I'm saying. You know, you come in with all the lawyering and end up lawyering so much that your client is in prison, and you're

back home. You need to make some wise decisions in dealing with representing these people. It's not about the technicalities of this and the technicalities of that. It's about the future of these people who are being placed on trial and who sometimes end up getting the short end of the stick because of this over lawyering. That's the way I see it.

MR. FORNEY: May I speak to that, Your Honor?

THE COURT: Yes, sir.

MR. FORNEY: Mr. Scott's made no plea offer.

THE COURT: All right.

MR. FORNEY: If he had -- if he had, I would have relayed it. I never told him she was going to testify against Mr. Dixon, never said that.

THE COURT: You never told him she was going to do what?

MR. FORNEY: That she was going to testify against Mr. Dixon, and he opposed --

THE COURT: She doesn't have to. She doesn't have to testify. But you know, the whole notion that the solicitor has to go around begging people to cooperate -- sometimes the lawyer needs to be begging the solicitor to let them cooperate for the benefit of their own client.

MR. FORNEY: And there are oftentime --

THE COURT: You know this hearing we had yesterday with the codefendant in Murdaugh who's -- who's Ms. Zmroczek's client -- bond revoked, facing 30 to 50 years in prison. And he's talking with the state trying to figure out his own best interest. Now he's out of jail, you know. That's --

MS. ZMROCZEK: Not -- not yet, but will be.

THE COURT: That's the result of some good lawyering by Ms. Zmroczek. You know, you can -- that's it. That's all we're going to do on this case. We're going to continue with our jury trial. I'm just speaking a word to the wise, particularly Ms. Beverly.

You're in charge of this lady, right?

MS. RIVERS: Yes, sir.

THE COURT: All right.

That's why I'm saying I'm talking to you more than anyone else and your husband and everybody else, because you have to make family decisions on these things.

And Mr. Forney has come and gone out and come in and gone out, and now it's your turn to go out and deal with your client and figure out what, if

anything, y'all can do with this case because I won't be the judge, chances are. I'm just here on this case with Mr. Dixon at this time.

And it doesn't matter to me whether this lady testifies or not. It doesn't matter to me whether she has a jury trial or not. But my interest is that these people who are being accused and who come in with lawyers who try to do lawyer-y things so much so in a lot of instances that their clients get the short end of the stick. And I don't want this lady here, Ms. Jones, to get the short end of this stick unless she deserves to get it. And that's all I'm going to say.

How about that, Ms. Beverly? How about that?

MS. RIVERS: Yes, sir. I agree with you.

THE COURT: You know what I'm talking about.

MS. RIVERS: It is challenging to have her in my custody.

THE COURT: I know.

MS. RIVERS: But, yes, sir, I agree.

THE COURT: It's hard to have an adult person who has some emotional shortcomings, just like Mr. Dubose's brother who was on that stand testifying, try to say all he had to say about the victim Dubose's struggles and what the family has

gone through trying to keep control of these people who were going to take an Uber from Charleston to Columbia.

All right.

We're going to move on, Mr. Forney.

MR. FORNEY: Thank you, Your Honor.

THE COURT: Your client, you know, you-all take it from there, but we're going to move on with this trial. And we'll have -- you know, when is -- when is her trial on the docket, Mr. --

MR. FORNEY: It's not scheduled.

THE COURT: Pardon?

MR. FORNEY: It's not scheduled.

THE COURT: Okay. Well, you know, Judge Hood is ramrodding these cases. And Mr. Scott is always ready. I've never heard him ask for a continuance. He's always ready.

You can do this trial on how much notice?

MR. SCOTT: I can do it tomorrow if you tell me to.

THE COURT: He can do it tomorrow. He can do it next week. He can do it the week after.

MR. FORNEY: And I have two trials every month for the next four months.

THE COURT: I know. You have two trials

every month. And I'm going to -- I'm going to monitor -- have my clerk monitor the schedule and see how many of those trials you actually did during, based on what you've just told me, you have scheduled.

MR. FORNEY: Please do.

THE COURT: How many did you do in the last month?

MR. FORNEY: In March, I did one.

THE COURT: All right.

In February?

MR. FORNEY: I didn't do any in February.

THE COURT: All right.

Well, good.

MR. FORNEY: Thank you, Your Honor.

THE COURT: The fact that you have a lot of trials, you still have the -- owe the same professional responsibility to this lady right here.

MR. FORNEY: I'm just -- I only mentioned that for scheduling purposes, Your Honor.

THE COURT: I understand. I give you a hard time all the time. You understand that, too.

All right.

Y'all ready to proceed?

MR. SCOTT: We are, Your Honor.

THE COURT: All right.

Bring them on. When you get close to retirement, you can just speak your mind on some of these issues.

MR. SCOTT: I look forward to that.

(The jury enters the courtroom at 11:43 a.m.)

THE COURT: All right.

Thank you.

You may call your next witness.

MR. SCOTT: The state calls Wayne Montgomery.

THE BAILIFF: Raise your right hand.

THE CLERK: State your full name, please.

THE WITNESS: Wayne Hugh Montgomery.

THE CLERK: You swear to tell the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

THE BAILIFF: Watch your step.

WAYNE MONTGOMERY

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q All right.

Investigator Montgomery, you are an investigator with the City of Columbia Police Department?

A Yes, sir. At the time during this incident, I was.

Q Okay. Oh, what do you do now?

A Currently, I am a sergeant.

Q Okay. And you're set to retire here soon; is that correct?

A I'm anticipating next month.

Q Well, how long have you been with the police department in Columbia?

A 22 years.

Q So that date, August 7, 2019, it's been established that's when Mr. Dubose was taken out of the trunk of a car. And did you get involved with the case that same day?

A Yes. I received a call from my sergeant at the time, Sergeant Moore, who told me there was an incident at the 300 Elmwood, which was the cemetery which this incident occurred. Then I, subsequently, responded to the scene from there.

Q Okay. At that point, I guess Mr. Dubose had already been taken to the hospital; is that right?

A Yes. The victim in the case was already

transported to the hospital getting some medical treatment at the time.

Q Okay. So crime scene investigators on the scene processing the car; is that correct?

A Yes. It was people taken -- crime scene taken photographs. We had -- the area was already roped off. Then I began canvassing for potential witnesses and other things.

Q Were you able to find any witnesses who could tell you anything about the circumstances?

A Not related to this incident. I spoke with some people in the area. I think there was alluded that there may have been people living in the area. So I spoke to some people who had no knowledge of what occurred, while we were there.

Q Okay. At some point, did you learn that the victim, Mr. Dubose, was in the hospital?

A Yes.

Q And what did you do? Did you go to the hospital?

A Yes. I traveled to the hospital and interviewed Mr. Dubose while he was at -- in the emergency room.

Q Okay. So you were able to speak with him?

A That's correct.

Q This has been introduced as State's 31. Is that how Mr. Dubose appeared when you saw him?

A Yes. At the initial time I spoke with him, that's how he looked.

Q Okay. And about how long were you able to speak with him?

A Without knowing the exact time, I would estimate 25 to 30 minutes initially, I would estimate.

Q Was he able to provide information about how he came to be in the trunk of a car?

A Yes.

Q Okay. After speaking with him, did you have suspects in mind that you might want to talk to?

A Yes. He identified the persons of interest as he indicated that he knew them from -- both individually for a period of time. So it was not an indication at the time that it was going to be a misidentification of who he was talking about that was responsible.

Q Okay. Was he ever hesitant or confused as to who put him in the trunk of the car?

A He was not confused or hesitant to provide that information to me when I initially spoke to him.

Q Did he ever give you any kind of conflicting information of how he got into the back of a car that

attempted to be set on fire?

A No, he did not.

Q Okay. Did you -- did you issue arrest warrants that day? Or when did you issue arrest warrants?

A I think we -- it could have been that day, without looking at the exact warrant to say what day we swore them out. But based off -- we followed up a few things that he indicated -- which also helped us to identify one of the persons of interest in the case also.

Q Okay. Who did you issue arrest warrants for? Who are the people?

A The defendant here, Mr. Dixon and also Ms. Jones.

Q Okay. That's Michelle Jones?

A That's correct.

Q And Martin Dixon?

A Martin Dixon and Michelle Jones.

Q Did you have any idea of their whereabouts at the time?

A At the time, I did not.

Q Okay. So -- so what happens? If you can't find the people, you issue arrest warrants. How did they come to be found?

A We put out what is called a BOLO, for all intents and purposes of be on the lookout. That information is distributed to local law enforcement, or even regional law enforcement, based on what we are attempting to do.

They are placed in something called NCIC, which is the National Crime Information Center. So if an officer comes into contact with them, they will be alerted that this person has a warrant and subsequently they'll be detained.

Q Okay. After speaking with Mr. Dubose in the hospital, did you have a reason to drive over to West Columbia and go to a hotel?

A Yes.

Q And what was the hotel?

A It was -- OYO was the name of the hotel. Some of the information -- information provided by the victim was they stayed in a hotel prior. So I was able to travel over to the hotel, canvassed the hotel and attempt if were any people or witnesses that knew that anyone stayed there and also obtained -- excuse me, a receipt of the timeframe in which Mr. Dubose stayed in that room and who rented the room that he indicated he stayed in.

Q Okay. So Mr. Dubose said that they had been

staying at the OYO. So you went over there. You were able to -- were you able to verify whether or not any of the people of interest stayed there?

A Yes. It was a room rented by the defendant in this case at the OYO, in which the victim and the -- this defendant as well as another codefendant had stayed.

Q Okay. Say his name. Do you know his name?

A Yes. Mr. Martin Dixon.

Q All right. So the room was booked to a Mr. Martin Dixon?

A Yes.

Q This is State's 41. Do you recognize that?

A This is the receipt which indicates the time in which the room was booked under Martin Dixon. Indicates that they paid cash. And this was August 3rd -- August 1 through August 3 -- 4th, actually, which they stayed in this hotel.

Q Okay. I'm looking at it. I'm seeing August 1 through August 5.

A I'm seeing on the fourth, he paid another cash. Then, he checked out on the fifth in the morning.

Q He checked out on the fifth?

A Yes. That would indicate the last time he

paid cash was the fourth.

MR. SCOTT: Okay. Your Honor, the state offers State's 41 for admission into evidence.

MS. ZMROCZEK: No objection, Your Honor.

THE COURT: Admitted.

(State Exhibit No. 41 is admitted into the record.)

BY MR. SCOTT:

Q And did Mr. Dubose indicate after they ran out of money for the hotel where they had been staying and what they had been doing?

A Essentially living inside the vehicle. All three of them were living inside the vehicle for -- that period of time and traveling within the vehicle.

Q Okay. Where did the investigation go from there?

A Subsequently, we -- there is a search warrant. All these things are being done sometimes simultaneously, not just in chronological order. But there was a search warrant done on the car, photographs taken as had been previously testified to, and items removed out of the vehicle.

Q Okay. And how -- how did he indicate that he had come to have that wound over his left eye there?

A He indicated that he was struck by Mr. Martin

Dixon over the head with a crowbar that we, ultimately, was able to identify from the execution of the search warrant from inside of the car.

Q And that's State's No. 39?

A Yes, sir.

Q Okay. So what else happens in the meantime? I guess Mr. Dubose has treatment in the hospital. He's discharged. Where does the investigation go from there?

A During this time, we also obtained a photo lineup based off of the information that Mr. Dubose --

MS. ZMROCZEK: Your Honor, I believe we have an issue.

THE COURT: What is the question?

MR. SCOTT: The question was -- let me tighten up my question a little bit more. It was a little open-ended.

BY MR. SCOTT:

Q You said he had already identified these people as Martin Dixon and Michelle Jones, people he had known for some time --

A That is correct.

Q -- and was familiar with?

Let me just, I guess, cut to the chase. When was Michelle Jones and Martin Dixon picked up?

A Ultimately, they were picked up October 16, 2019, in Hickory, North Carolina.

Q Okay. Are you familiar -- do you have any knowledge of any ties they have in Hickory, North Carolina?

A I do not.

Q And then they were bought back down to Columbia to speak with you?

A That is correct.

Q And were you able to speak with Michelle Jones?

A Yes, sir. I was.

Q Okay. And did she admit her involvement --

MS. ZMROCZEK: Objection, Your Honor. I -- we have a matter of law we need to take up outside the presence of the jury.

THE COURT: All right.

Ladies and gentlemen, if you'd go to the jury room for a break. Please do not discuss the case.

(The jury exits the courtroom at 11:54 a.m.)

THE COURT: Yes, ma'am.

MS. ZMROCZEK: Your Honor, I would move for a mistrial at this time. The reasons are the following: You literally just spent 30 minutes inquiring whether or not the codefendant was going

to testify and telling about what she needed to do, blah, blah, blah. She advised the Court that she was not going to testify. She -- you told her to go think about it. Not five minutes into his testimony, he asked the investigator: Did you speak with Michelle Jones? Did she admit her involvement?

Your Honor, that is absolutely improper. It is a violation of *Bruton; Crawford*. And quite honestly, it just flies in the face of the rules of the Court. For Your Honor to -- to -- to love and respect the rules as you do and -- and for trial lawyers to get up here and just like you said this case is 60 years. To try to backdoor in that information is absolutely improper and I demand a mistrial.

THE COURT: Okay. She demands a mistrial, Mr. Scott.

MR. SCOTT: Judge, the way I've always understood *Bruton* was the codefendants give statements implicating one another. I asked did she implicate herself or did she admit to the involvement. I never asked him about what she said about the man on trial. So I -- I think that is a proper question, in my opinion. Just did she

admit to her involvement?

I'm kind of -- I'm schooled enough to understand not to ask him what she said about the defendant. That's -- that's not my -- that's not my --

THE COURT: You asked him did she admit her involvement.

MR. SCOTT: Correct.

THE COURT: How does that violate whatever rule you said?

MS. ZMROCZEK: Well, it violates the confrontation clause, Your Honor. Because I don't get to cross-examine on what she admitted her involvement to be. That's an absolute Sixth Amendment constitutional right under *Crawford* to confront the witnesses against you. Their evidence here comes from the very shaky testimony of Mr. Dubose. And they're trying to, you know, pad it with things that they're trying to corroborate what he said.

And Your Honor, there are ways to do that. You run phone records. You get cameras. You test fingerprints. You get the DNA. You don't backdoor in testimony of a witness I can't cross-examine about what her testimony or about

what she admitted to.

THE COURT: What -- what question did you just object to?

MS. ZMROCZEK: I objected to: Did she admit her involvement?

THE COURT: And you objected?

MS. ZMROCZEK: Absolutely.

THE COURT: And you said you have a matter of law?

MS. ZMROCZEK: Yes.

THE COURT: And he didn't answer the question?

MS. ZMROCZEK: No.

THE COURT: Okay. So it's just a question that the jury could disregard.

MS. ZMROCZEK: Okay. Then I would order that stricken from the testimony and you order them that they cannot consider that and I would ask that this not be an area that I have to object to again, Your Honor.

THE COURT: Okay. How about that, Mr. Scott?

MR. SCOTT: Your Honor, the Sixth Amendment guarantees the right to confront one's accusers. I'm not asking him to elicit any testimony where she has accused him of anything.

THE COURT: Would that be hearsay?

MR. SCOTT: I would -- I would argue that would be -- that would fall under 804(b)(3), Your Honor. That's a statement against interest.

THE COURT: Of a nontestifying person.

MR. SCOTT: Correct. A declarant unavailable. Hearsay has been determined. Some cases, if Your Honor rules to be reliable when the statement is so far against your own interest, be it penal or pecuniary, it has indicia of reliability. So I -- I think him just acknowledging that she admitted to her presence and involvement would fall under that hearsay exception.

MS. ZMROCZEK: Your Honor, but, you know, unfortunately, for the state, the Constitution trumps the, you know, rules of hearsay. A statement against interest is a statement so far contrary to the declarant pecuniary or proprietary interest so far (inaudible) the declarant to criminal liability. But, Your Honor, this case is based on testimony that I can't cross-examine what she admitted to what her inconsistencies were, what her state of mind was.

Your Honor, she -- she -- when she admitted

her testimony, you know what she also admitted? That my client worked for NASA; that the victim killed her cousin. She admitted a lot of things that I can't go into because she's not available for cross-examination. And -- and -- and it's absolutely improper.

THE COURT: All right.

Well, I'm going to side with Ms. Zmroczek and sustain the objection and tell the jury to disregard that question.

MS. ZMROCZEK: And will you strike it from the record as well?

THE COURT: No. Disregard, that's what I mean.

MS. ZMROCZEK: Thank you.

THE COURT: Disregard.

All right.

Let's bring them back.

(The jury enters the courtroom at 12:01 p.m.)

THE COURT: Ladies and gentlemen, I sustain the objection to the last question. You are to disregard that last question.

You may proceed.

BY MR. SCOTT:

Q Okay. You attempted to interview Ms. Jones?

A Yes.

Q And did you later attempt to interview Mr. Dixon?

A Yes.

Q After speaking with them, what were the charges that you decided to file against them?

A Mr. Martin Dixon was charged with -- it was attempted murder, the arson --

MS. ZMROCZEK: Your Honor, objection.

THE COURT: The question is: What the defendant is charged with?

MS. ZMROCZEK: Correct.

THE COURT: And the basis for the objection?

MS. ZMROCZEK: Your Honor, based on the state's response to my previous motion, I would argue that that is an improper --

THE COURT: All right.

Mr. Scott, response?

MR. SCOTT: The question is what he had charged him with at the time of speaking with him, not what he's on trial for.

THE COURT: Overruled the objection.

BY MR. SCOTT:

Q Okay. So you charged Mr. Dixon with attempted murder, arson?

A And kidnapping.

Q Kidnapping. Okay. And Ms. Jones was discharged with what?

A Attempted murder, kidnapping, and arson.

Q Okay. So after your investigation, you determined that both of them would face the same charges?

A That's correct.

Q And Ms. Jones still is yet to have her day in court. She will be tried next?

A Yes.

Q Okay. Okay. I think that's all the questions I have for you, Investigator Montgomery.

A Yes.

Q Okay. Thank you.

Answer any questions Ms. Zmroczek has for you.

MS. ZMROCZEK: May it please the Court?

THE COURT: Yes.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q The last questions you were asked were after speaking with Mr. Dixon, you charged him, right? That was the question?

A He was officially served his warrants.

Q He was officially served his warrants because tell the jury when you took out those warrants.
A On August 7, the --
Q August --
A -- date of the incident on which Mr. Dubose was --
Q So --
A -- recovered from the vehicle trunk.
Q So August 7 after speaking with Mr. Dubose --
A Yes, ma'am.
Q -- right?
All right.
Mr. Montgomery -- Investigator Montgomery, I want to talk to you about -- let's go back. Twenty-two years as a police officer, right?
A 26.
Q 26?
A Yes, ma'am.
Q Twenty-six years as a -- a police officer. Twenty-two as an investigator?
A No, ma'am. Twenty-two with the City of Columbia.
Q Twenty-two with the City of Columbia. You go to the Academy?
A Yes, ma'am.

Q You get training?
A Yes.
Q You -- you were told how to investigate?
A Yes.
Q They give you suggestions on things to do to -- to help build the case against another person, right?
A That is correct.
Q And you want to make sure that you do all of those things, right?
A Yes.
Q Because when you're talking about somebody's liberty, you want to make sure you're doing the right thing?
A That is correct.
Q Doing your job?
A Yes, ma'am.
Q You want to be thorough, right?
A Yes.
Q You want to make sure that the information that you have is accurate?
A Is that a question or a statement?
Q So what I said is: You want to make sure that the information you have is accurate?
A Yes.

Q And you want to make sure that it's complete?
A Yes.
Q So when you swore out these warrants in front of a magistrate on August 7, had you done a thorough investigation?
A The -- the investigation was continuing -- continuous and ongoing. As indicated earlier, the victim had a previous knowledge and relationship with both defendants in this case. There was not an issue of misidentification.
Q Right. He knew who they were, right?
A Yes.
Q I want to talk to you a little bit about that. You write reports, right?
A That is correct.
Q You have a lot of cases, right?
A Most certainly.
Q You also take handwritten notes before you write -- before you write your reports, correct?
A I have, yes, ma'am.
Q Okay. And you did that in this case?
A Yes.
Q And then you turned them over?
A For discovery, yes, ma'am.
Q For discovery, for evidence in the case,

correct?

A That's correct.

Q All right. So I want to talk about that for a little bit. You met with Mr. Dubose in the hospital?

A It's one of the places I met with him.

Q Where else did you meet with him?

A I met with him at the Police Department.

Q Okay.

A He -- he came subsequently.

Q And you had some handwritten notes from those meetings, right?

A Various contact, yes, ma'am.

Q And on one of those handwritten notes, since I'm going to show it to you, I'm just going to mark it for identification, okay?

A Yes, ma'am.

(Defense Exhibit No. 1 is marked for identification.)

BY MS. ZMROCZEK:

Q I'm going to show you Defense 1 for ID just to make sure that this is your handwriting?

A Yes, ma'am. This is.

Q Okay. And on that, you're taking those notes realtime, correct?

A Yes, primarily.

Q You -- I'm sorry?
A Primarily. I can't say exactly, but most of the time. Yes, ma'am.
Q Right. So if you and I are talking and then I write it down or shortly thereafter, right?
A Yes, or shortly thereafter.
Q And then you use these notes and other information in your brain to -- to -- to type an official report, right?
A Yes, ma'am, at some time.
Q Okay. So we'll get to that later. But I want to ask you about this handwritten note. "Martin lost a finger." In quotes, right?
A That's what's on that paper.
Q Why did you put that on the paper?
A The victim, Mr. Dubose, indicated that Martin had a loss finger or partially lost finger.
Q Okay. No chance of mistaken identity, right?
A That's -- yes.
Q Okay. And then, later on, you did a three-page typed up kind of official report, right?
A Some case notes, yes, ma'am.
Q Case notes. You have those with you?
A Yes, ma'am.
Q Okay. And I'm referring to the top of page 3

of your official case notes --

A Yes, ma'am.

Q -- right?

Read that first sentence?

A Start where it says involved or actually where actually period and then he?

Q The first sentence would be "he".

A Okay. "He also said that the male suspect was either -- either missing a finger or partial part of his finger was missing. Warrants obtained for the listed subject."

Q Okay. Missing a finger or partially missing a finger, right? That's how well he knows Mr. Dixon?

A That's what he indicated to me at the time.

Q That's what he indicated to you. And that's what you based this whole case off of, right --

A No, ma'am.

Q -- is what he indicated to you. It's not?

A Not that he was missing a finger.

Q Of course. Right.

You based the case off of Mr. Dubose telling you things?

A His identification of the defendant.

Q Right. So let's talk about that.

Mr. -- you put NCIC BOLO out. And Mr. Dixon

is in Hickory, North Carolina, right?

A He's ultimately found in Hickory, North Carolina.

Q Right. He told you he wasn't even in South Carolina, didn't he?

A Who is that, ma'am?

Q Mr. Dixon.

A I believe if he did say anything, he may have said that during the time we spoke.

Q What did you do to investigate that?

A Whether he was in North Carolina?

Q That he wasn't even in South Carolina.

A He was -- he was in South Carolina. Well, I have a receipt that he stayed at this particular hotel --

Q Perfect. Let's --

A -- during the same time, as well as statements from the victim in this case.

Q Okay. Let's talk about this receipt, State's Exhibit 41. What are the dates on this receipt?

A The dates state that he paid cash on the fourth, the third, and the first.

Q Right. So Mr. Dixon paid cash?

A Right.

Q 8/1, 8 --

A Sorry.
Q 8/1, 8/2, 8/3, 8/4, right?
A That is correct.
Q Checked out 8/5?
A Yes, ma'am. That would indicate that he did.
Q Something that's important when you are doing investigation and your corroborating information is you want to kind of look at a time line, right?
A That is correct.
Q That -- that -- that helps us know where we are, where we're going, who's telling the truth, what can be verified, right?
A That is correct.
Q So this receipt verifies that he was in a hotel three days prior to August 7?
A Yes, ma'am.
Q But that he had checked out?
A Yes.
Q You also found information in the car -- I'm going to show you State's Exhibit 20, right? Hospital -- hospital information for Ms. Michelle Jones, right?
A Yes, ma'am.
Q What is the date on that visit?
A Bear with me. My -- I'm getting a little

older. I can't see quite as good.

Q I have a flashlight, my phone flashlight, if it will help you?

A This indicates August 5, 2019.

Q August 5, right?

A Yes, ma'am.

Q So what we have is Mr. Dixon and Ms. Jones, August 5, at a hospital after they checked out of the hotel, right?

A Yes, ma'am.

Q And so when you're trying to corroborate information just like you did with the hotel receipt, did you go to the -- to the -- to the hospital and get any of their videos?

A No, ma'am. I did not.

Q They have video, right?

A At some places in the hospital, they do.

Q Are you familiar that Lexington Medical Center is fully armed with video inside and out?

A They do have video.

Q Okay. But you didn't get it?

A I did not get video for that particular visit.

Q Okay. 'Cause they also have video in the parking lot, right?

A I do not know that.

Q Okay. You don't know. You didn't investigate that?

A No, ma'am. I did not get video.

Q Okay. So if there were a video and Mr. Dubose says that he is in the car by himself, you would be able to verify that with the video, right? If they had it?

A That's possible. Yes, ma'am.

Q But you didn't -- you didn't do that, right?

A No, ma'am. I did not.

Q But then, he tells you, he Mr. Dubose, tells you that he goes to a gas station, right?

A At some point he indicates that they are traveling together, spending the night inside the vehicle also.

Q Spending inside -- spending the night where?

A Inside the car. They're living in the car, essentially.

Q When did he tell you that?

A When I met him.

Q Okay. So he tells you that he was spending the night in the car?

A He was living inside of his vehicle.

Q Okay. He also told you that he called his

brother from the hospital parking lot and said he wanted to go to Charleston, right?

A I can't recall exactly, but I believe he may have said that, yes, ma'am.

Q Okay. And so that's -- that's August 5, right? That's what the hospital records said.

A This is when she was in the hospital.

Q Right. August 5?

A Yes. That's what that's --

Q Okay.

A -- indicating.

Q At what point did you call Dexter Dubose to confirm that?

A I didn't spoke with Mr. Dubose.

Q Never spoke with him?

A Mr. Dexter Dubose, no, ma'am.

Q Never asked him, hey, you talked to Martin Dixon, right? Did you ever ask him that?

A No. I spoke with the victim.

Q Right. Right. But you didn't corroborate anything that he said?

A I didn't speak with his brother.

Q Okay. Didn't speak with his brother, so you had no independent knowledge about if there was ever a conversation with Mr. Dexter Dubose?

A No, ma'am.

Q Okay. In fact, as we've learned, Antrone Dubose made two phone calls to his brother that night, right?

A He was in contact with his family.

Q Okay. Cell phone found right there in the console of the car?

A I'm sorry?

Q There was a cell phone found right in the console of the car?

A There was a cell phone in the car.

Q Did you run any testing on that cell phone?

A No, ma'am.

Q Do any records?

A No, ma'am.

Q Verify any of that information?

A We did not do any search warrant on the victim's cell phone.

Q You would agree with me had you done that, we could say at 8/5 or 8/6 or 8/7 or never that these phone calls were made, right?

A Yes. You could -- you could --

Q That's what phone records show?

A That is correct.

Q Are you familiar with how to subpoena phone

records?

A Yes, ma'am. I've done several.

Q Is it -- is it a difficult process?

A You just fill one out. No, ma'am. It's not.

Q Just fill out a search warrant, send it to them, they send you the records right back, right?

A Not just right back. After a period of time.

Q After a period of time?

A Yes, ma'am.

Q Since August 7 when you got assigned this case in 2019 have you gotten any phone records?

A No, ma'am. I did not.

Q Okay. I want to talk about some other notes that you took.

(Defense Exhibit No. 2 is marked for identification.)

BY MS. ZMROCZEK:

Q I'm going to show you Defendant's 2 for ID and ask you if this is your handwriting?

A Yes, that is.

Q That's your handwriting?

A Yes, ma'am.

Q And tell the jury what that identifies?

A Indicates -- it says suspect number.

Q Suspect. Who -- who are we talking about?

A In this particular case, we're talking about Mr. Martin Luther Dixon.

Q Mr. Martin Dixon. You even went as far as not just to write his phone number down, but you even went as far in your investigation to run an inquiry on that number; is that correct?

(Defense Exhibit No. 3 is marked for identification.)

BY MS. ZMROCZEK:

Q I'm going to hand you Defendant's 3 for ID and see if you recognize that information?

A Yes, ma'am.

Q What is that?

A That is a provider inquiry. I wanted to confirm the provider on this particular phone number.

Q And why would you want to confirm the provider on a particular phone?

A I did that in order to provide that information to our fugitive task force team to assist in helping to locate --

Q Right.

A -- the defendant.

Q Because not only do phone records provide call detail information, but they provide location information, right?

A It can.
Q They can. They can provide historical location information, right?
A They can.
Q Historical, meaning I ask you -- whatever date I get to investigate this case, I can write this company and say, "Hey. Can you give me the phone records and including the location and geodata and all of that stuff for certain time period," right?
A Yes, ma'am.
Q Because what that will do is that will place a phone in a certain location, right?
A Yes, ma'am. It could.
Q And now, that information is sensitive. It's only stored for a certain amount of time with those companies, right?
A The companies that provide that information.
Q Right.
A Not all of them do.
Q Not all of them do.
A Not all of them.
Q But certainly the bigger companies do. You've gotten those records before?
A I have in various cases. I can't say in every case that they provide exact GPS location

information.

Q And this indicates, who was the cell phone provider for that number?

A That one is Sprint.

Q Sprint for Mr. Dixon's phone?

A The number that we have, yes, ma'am.

Q Pretty -- pretty common company, right?

A My understanding, it is.

Q Did you -- did you get the fugitive task force to ping the number to find where Mr. Dixon was?

A I provided that information to them and allowed them to follow up with how they find any suspect.

Q Okay. Well, did they?

A They attempted to locate off of their information. And ultimately, they didn't have any results.

Q Okay.

A He was found later.

Q Was that put in your notes at all?

A No, ma'am.

Q Okay.

A I provided all that information to them.

Q Okay. As the lead case investigator -- you were the lead investigator in this case, right?

A Yes, ma'am.
Q Tell the jury about what some of your duties are as the lead case investigator.
A Speak with victims, speak with potential suspects, obtain information. Various, depending on the situation. No cookie-cutter answers to exactly what we do. Interview people, attempt to locate people, various things.
Q Attempt to verify what people say?
A That's correct.
Q Attempt to corroborate that information?
A Yes, ma'am.
Q Because you certainly want -- wouldn't want to arrest somebody just on someone's word, right?
A It depends on the circumstances. I just stated there's no cookie-cutter answer to everything. In this case, there was enough information to indicate that this defendant was the individual responsible. He was with the victim up until the incident occurred.
Q Okay. And the incident occurred the night of August 6, right?
A He was found on the seventh.
Q He was found on the seventh, right?
A That's correct. The morning.
Q The morning of the seventh, around 8:45 to

9 a.m.?

A Yes, ma'am.

Q And the information that you had was it happened the night before?

A The victim indicated he was in the trunk for a period of time. It was hard for him to gauge time. So it could've happened in the early morning hours, it could have happened all night. He was unsure.

Q Okay. But when you talked to him and certainly you sat here for his testimony, do you have any knowledge that it wasn't the same night that they left the -- the hospital?

A He indicated that it was not the same night that they left the hospital, which would have been the fifth.

Q He did -- so he didn't tell you that he called his brother from the hospital parking lot and said, "I want to go to Charleston"?

A He may have indicated that during our interview.

Q Okay. So I want to get back to this investigation. So you said some of your duties are to interview people. You also have crime scene investigators that work at your -- or in concert with you, right, your team?

A Yes, ma'am.
Q Okay. So Mr. Potash, we heard from him, right?
A Yes, ma'am.
Q And there was another investigator that was out there with him that day, correct?
A I believe Ms. Watson. I believe.
Q And then you executed a search warrant on the car. And that -- that's a whole another group of investigators, right?
A Yes, ma'am.
Q And they turned all of the evidence into you or into CPD but under your case file, right?
A Yes, ma'am.
Q And then you get to decide what to do with it?
A That is correct.
Q Okay. So you have 11 fingerprints, 11 fingerprints, good fingerprints, that CSI Potash collected. Tell the jury what you did with those fingerprints.
A You indicated that they were good. I can't make that assessment. In this case, with them living inside the vehicle for a period of time, their fingerprints or DNA is expected to be inside of the

vehicle or on the vehicle as well as their personal effects that were also located inside of the vehicle at the time that we executed the search warrant, which also aided in identifying and corroborating what the victim stated as far as who was inside of the car or access to the vehicle.

Q All right.

Let me ask the question again. There were 11 fingerprints located outside of the vehicle in the areas of the gas can, in the areas of the driver's side, in the areas of the trunk that were collected by CSI Potash, correct?

A You said a gas can?

Q Gas tank.

A Okay. I'm sorry. I thought you said --

Q I may have.

A Okay. Yes. There were fingerprints that were collected on the vehicle, outside of the vehicle at the time.

Q If someone tells you they weren't in South Carolina, if you want to corroborate that they were and that they touched that car and they touched the gas side and they touched the driver's side door outside of the vehicle, was there anything stopping you from running those prints?

A No, there was not.
Q Did you do that?
A I did not.
Q When you interviewed or -- or at least served the warrants on Mr. Dixon, what did you notice about his fingers?
A I didn't --
Q All 10 were still there?
A I'm sorry. I didn't particularly look at his fingers at the time.
Q You didn't? Okay. Have you had a chance or an opportunity to inquire about that perhaps yesterday?
A Yes. I looked at his hand.
Q And what did you learn?
A It appeared as if he did not have a missing finger.
Q All of his fingers are there?
A It appeared that way.
Q Uh-huh.
A I didn't look closely at his hand.
Q When someone tells you that they are struck by an object and that object is collected, is there anything stopping you from running scientific tests on that object?
A No, ma'am.

Q Okay. So in this case, are you -- you were able to view the vehicle yourself, right?

A Yes, ma'am.

Q You saw the copious amounts of dried blood on the back of -- and that's just my word. You saw dried blood on the back of the bumper on both sides of the bumper, correct?

A It appeared that there was some evidence that something occurred. When you say this amount of blood, I don't recall that off the top of my head. I would have to see that.

Q Okay.

A But I know there were swabs.

Q Not only were they swabbed, they were tested with preliminary hematocrit test at the scene, right? Which is a preliminary identifier of blood, correct?

A I did not -- I can't testify to that.

Q Okay. But if Investigator Potash testified to that, you wouldn't contradict what he said, would you?

A No.

Q Okay. Because he's the one that did the collecting?

A Yes, he did that.

Q And he turned it in under your case number,

correct?

A That's right.

Q And you have access to all of that information?

A Yes, ma'am.

Q In fact, it's your case. So you want to make sure that you have all of the information, right?

A That is correct.

Q Didn't run any of -- any of those tests on -- on the -- any of the samples that were collected, correct?

A No, ma'am.

Q And -- and like you said, there were numerous samples of swabs from like the steering wheel, the gearshift, all of those swabs were taken, right?

A They were collected in this case.

Q They were collected and not tested, right?

A That is correct.

Q Well, but the victim said they were all living in the car. So I would expect their DNA to be there, right?

A DNA and fingerprints. They were living inside the vehicle for a period of time. Yes, ma'am.

Q But isn't the way to corroborate that to just test it?

A That could be one way, yes, ma'am.

Q Okay. What's another way?

A The clothing, the items left inside of the vehicle, statements of the victim that indicated they were together.

Q Okay. So you just didn't test any of them?

A That's correct. I did not test them.

Q Okay. And this State's No. 39, you tested or run any hematocrits for any blood on this item?

A No, ma'am. I did not test any of the items.

Q Okay. Let me ask you this: The -- the laceration, the small laceration above Mr. Dubose's eye here on 32, that was the injury that he suffered, right?

A Yes. Yes, ma'am.

Q That was -- that was the injury, according to him?

A That's correct.

Q Right. And 23 is a picture of the same item, right?

A Yes, ma'am.

Q Any blood on that -- any testing or any blood seen visually or suspected? Any fluids on that seat?

A There does not appear to be from that photograph the appearance of any blood.

Q Let me ask you this: If I bent over right now and smacked my head on -- on -- on this jury box, is that -- is that a way that could give me a laceration?

A Yes, ma'am. It could.

Q Okay. If I hit my head on a bumper, is that a way to give me a laceration?

A That is a possibility.

Q Okay. It's a possibility, right?

A Yes.

Q Okay. You said there was information that corroborated that they were in that car. Sure, at some time, but not that night, right?

A Yes. The victim indicated they were living in the car.

Q Right. Right. I understand that. But my question is: The paperwork corroborates they were in there August 5, right?

A That's one of the dates, yes, ma'am.

Q One of the days. And this paperwork, State's 29, that's another thing that you found in the car, right?

A Yes, ma'am. This is a letter.

Q A letter? Who's that letter to?

A Mr. Martin Luther Dixon.

Q What's the date on that letter?
A May 20, 2019.
Q What's the address on that letter?
A To Mr. Dixon?
Q Yeah.
A [redacted] Boy Scout Road, Gaston, South Carolina 29- --
Q Gaston, South Carolina?
A -- 053.
Q Just across the river, right?
A That's what this indicates, yes, ma'am.
Q Lexington County. So in this -- by all indications, this letter would indicate that Mr. Dixon was living at this address in May 2019 right?
A He received some sort of mail at that address.
Q All right.
So did you go out to -- to -- to figure out who this was?
A I provided that information to the fugitive team.
Q Okay. Did the fugitive team provide you any information on that?
A They did not directly give me any information. As I gave them that information, I

allowed them to do their fugitive portion.

Q Okay. And that was just to find him, right?

A That is correct, yes, ma'am.

Q But if you're trying to verify whether he lives in Charleston or whether he lives in Gaston as an investigator, is that the fugitive responsibility -- fugitive team's responsibility or would that be you?

A That's a part of what we did in this case, provided them with the information and attempt to make contact with him.

Q But you -- you never made -- you never attempted to ride out to Gaston to see who that was?

A I did not go myself to that address, no, ma'am.

Q Did anybody?

A I won't -- I can't testify to that other than I provided the information.

Q Okay. Because that would've been your notes, right, if you received information about who lived there or why he was receiving mail there?

A It could've been -- it could've been, yes, ma'am.

Q You don't have anything in your report, right?

A Not that indicates that, no, ma'am.

Q Okay. Let me ask you about this. You've had to get a driver's license before?

A Me? Yes, ma'am. I have.

Q All right.

When you got your driver's license, did they give you a test?

A Yes.

Q A written test?

A It's been some time ago. But I believe so, yes, ma'am.

Q Okay. And a driving test to make sure you were competent to be able to drive?

A Yes, ma'am.

Q Okay. And Investigator Montgomery, let's say we had -- CPD has their own fingerprint lab, right? Don't even have to send it to SLED, right?

A Theoretical.

Q CPD has their own fingerprint lab?

A We have -- we have the ability, yes.

Q Ability to -- to -- to run fingerprints, right?

A Yes.

Q If during the course of your investigation you ran those fingerprints right around the gas tank and they came back to some other person, not Mr. Dixon,

what would that have done to your investigation?

A Someone could have touched the car at a different period of time.

Q Right. Somebody could have touched that car. Somebody could have gotten into a fight with Mr. Dubose at the cemetery, right?

A No.

Q No? Nobody could've done that? Impossible?

A Not in this particular case, ma'am.

Q How -- how -- let me ask you this: How was it that you can rule out every other possibility?

A The victim was pretty clear on who did this to him.

Q The man with the missing or partially missing finger?

A He indicated that, yes, ma'am.

Q He was very clear on that?

A He indicated that.

Q Not only -- not only are there phone records to help locate people but the beauty of the City of Columbia and Cary Shealy -- tell the jury who -- tell the jurors who Cary Shealy is?

A Mr. Shealy is the owner of Statewide Security. During this process, we obtained some video in the area as closely as we possibly could to the

cemetery where the victim was found. There are also multiple routes into where the cemetery is at based on the video we did have. And if I'm not mistaken, it was probably several hours of video. We did not observe the vehicle enter in that particular camera view. However, as I stated, there other ways to get into that cemetery.

Q There are other ways to drive a car into that cemetery?

A Based off of with the video we had access to, yes, ma'am. It's not at the actual cemetery.

Q Right. We -- but there's only one way into the cemetery and there are multiple ways to get to the three different cemeteries located in there, right?

A No, ma'am. That's not correct.

Q Okay. Where are the other entries --

A There are other entries --

Q -- for a car?

A You can drive under the bridge. You can come from Elmwood. You could also come from, I believe that community was for Sloan School, or they used to call it Sloan School. There also. So it's not just one way to get into that cemetery. I don't know the exact streets at the moment. So I don't want to be incorrect on that.

Q Which is why when you asked Cary Shealy for his cameras, you got cameras that went down Elmwood from Bojangles and going down towards downtown, right?

A We had the sources of the video, the closest that we could obtain.

Q Okay. You got them right close to the gas station, right?

A We had the video -- I don't want to agree to what you're asking me. The source that we provided were the ones that we provided. You could be talking about multiple locations.

Q Okay.

A I can't just agree to that.

Q You viewed the cameras that you -- that you -- that you collected, right?

A Yes, ma'am.

Q And you turned those over?

A Yes, ma'am.

Q You would agree that it was August 6 through August 8 with four different camera views, multiple hours of video that you were provided?

A Yes, that we requested.

Q Never saw Martin Dixon walking away from the cemetery?

A Not from that camera view.

Q Not from any of the camera views, right?
A Not from the camera -- four video camera views that we requested that --
Q Never saw --
A -- was in the area.
Q And never saw Mr. Dixon driving a black vehicle?
A Not from those camera views, no, ma'am.
Q Okay. What information did you follow-up on about this building where the incident happened?
A From talking with the victim, he was never able to tell us exactly where this building was. We attempted to get a description. He was unable to actually tell us, hey, this is where it occurred. We searched West Columbia, looked for a spot. Ultimately, we just knew where we found him, which was the incident location --
Q Okay.
A -- where the incident -- where he was found.
Q What about the McDonald's that he told you about? Do you remember him telling you about the McDonald's?
A He talked about various locations. I -- I don't want to say specifically.
Q Did you go to any gas stations? Didn't you

tell him you needed to know the color of the gas station and he said it was a Pit right by the hospital? Did you go to that gas station to verify any of that information?

A We were looking for the locations may have occurred.

Q Okay.

A So I went to various locations to attempt to identify the building he was trying to talk about.

Q Okay. Let me -- let me ask the question a little slower. He told you about a gas station, right, where he and Mr. Dixon supposedly got out of the car and were having conversation, right?

A He may have mentioned that, yes, ma'am.

Q May have mentioned that. That was after leaving the hospital, right?

A He gave a chronological order of events. I can't necessarily agree to what you're saying.

Q Okay.

A Ladies and gentlemen, he stated at multiple locations that they went to. And to find the location where he was initially assaulted, we were unable to identify the actual building that he said where he was assaulted and forced inside of the trunk -- I mean, inside the vehicle. I'm sorry.

Q So but you do know that it was a Pit Gas Station that at some point he was at with Mr. Dixon?

A He may have mentioned a specific gas station. He may have.

Q And had you gotten that video from that gas station, it could have shown Mr. Dubose driving off and leaving Mr. Dixon and Ms. Jones at that gas station stranded, couldn't it?

A It could have.

Q Right. And if you had gotten the phone records, it could have shown Mr. Dixon calling his friend in Hickory, North Carolina, because he was stranded at the gas station where he was left by the person that owned the vehicle, right? It could have shown that?

A That's the theory that you're presenting.

Q It's a theory, right? It is not an alien theory, it's a reasonable -- it's a reasonable theory, right?

A No.

Q No. Not at all because that's not what the victim said?

A That's not what happened in this case, ma'am.

Q Right. When were you told that Mr. Dixon charged Mr. Dubose $600 to stay in a trailer for two

weeks? When were you told that?

A I was not told that.

Q Never told that, right?

A No, ma'am.

Q Did you ever inquire or understand how Mr. Dubose was driving around in a 2007 Lexis?

A I'm sorry? How did he purchase it?

Q Yeah.

A It wasn't relevant to the case how he -- what vehicle he drives. He owns his vehicle.

Q All right.

What testing did you do on the vehicle to corroborate that the trunk latch was broken?

A Did not test the vehicle.

Q We don't have any information about that, do we? I lied. Other than from Mr. Dubose, we have no independent information about that, right?

A That's correct.

Q Okay. You had the key to the -- to the vehicle. It was inside the vehicle, right?

A It was a key fob, yes, ma'am.

Q Never did any testing on it?

A On the actual key.

Q Correct.

A No, ma'am.

Q Never did any investigation onto Mr. Dixon's whereabouts prior to this time, whether he was living in Columbia or Gaston or whether he was living in Charleston? Didn't do any information into that?

A We had some addresses for him that, as I indicated, was provided. There was an address in Holly Hill. There was an address in Gaston. So there was some information that was provided for the fugitive team to attempt to locate him.

Q Right. But as far as following up, if someone says they weren't even in North -- in South Carolina, what did you do to follow up on that?

A I didn't have any information. He was in South Carolina.

Q I understand you keep saying that. You didn't see him, did you?

A No, ma'am.

Q Okay.

A I did not.

Q You collected phones from Ms. Jones and Mr. Dixon when you arrested them, right?

A That is correct.

Q And didn't run any historical cell location on those either?

A We did phone dumps on those phones. And it

was clearly apparent that Mr. Dixon had a phone that was operated after the incident -- the date and time of this incident, which I believe was September. And then also the -- we ran a phone dump, I believe, on the other defendant's phone also.

Q Okay. And nothing tying him to Mr. Dubose?

A Not at that time.

Q Who at any time?

A As I indicated, that was a different phone. It was obvious that this phone was purchased or obtained after the incident.

Q But we know the one in the car was not because it was in the car. So it was clearly relevant to this time period.

A That was the victim's phone.

Q Right.

A Yes, ma'am.

Q Okay. So all of the verifiable information, and by independently verified, not -- not -- not -- I want to exclude what came out of Mr. Dubose's mouth. The information independent of what came out of Mr. Dubose's mouth indicates that August 5, they're checked out of a hotel and at a hospital, right?

A Yes, ma'am.

Q Nothing independent to verify that they were

even in the state of South Carolina after August 5?

A Independent of what the victim said.

Q Independent of what the victim said.

A I do not have anything else.

Q Okay. No further questions.

THE COURT: Any redirect?

MR. SCOTT: Quick matter of law, Your Honor. Very brief. I mean, I can approach.

THE COURT: All right.

Let's stand for a moment.

(Sidebar conference is held off the record.)

THE COURT: We're going to break for -- have y'all break for lunch. And I've found my foreperson.

Mr. Tucker, you've been holding the foreperson seat since we started. So you'll be the foreperson, the spokesperson for the jury.

Please do not discuss the case. We're going to break until 2:30. 2:30.

(The jury exits the courtroom at 12:47 p.m.)

THE COURT: All right.

Mr. Scott?

MR. SCOTT: Your Honor, the line of questioning was repeated multiple times. One of them to the investigator was: All of the

information that you responded to came solely from the victim's own statement, that was all you had to go by in placing anyone at the scene of the crime?

One of the questions to be -- example was: How can you be sure the victim didn't get in a fight with another homeless person at the scene if you only relied on the victim's account?

That very last question was something to the extent of: All the information independent of the victim was that they checked out of the hotel August 5 and nothing independent of the victim's account would put anyone at the scene of Elmwood Cemetery during the crime in question? I would imagine we could probably pull that up pretty quickly.

But anyway, the -- I think that opens the door for him to be able to explain, "No, I talked with the codefendant and she put herself at the scene." That in no way implicates the defendant. So it steers clear of *Bruton*. It explains his investigatory efforts. It explains his role as a law enforcement agent in trying -- not shooting from the hip, but actually gathering information.

And I think it's a little misguided for her

to hit him with that question knowing that he can't say, "Well, as a matter of fact, Ms. Jones says she was there. So I'm not independently relying solely on the victim's account."

That was the line of questioning. She may disagree with it. It was right there. I saw it coming down the pipe. At any rate, I don't see it as a -- I see it as a hearsay exception being able to rely on a statement against her own penal interest, putting herself at the scene. I don't see it as a Sixth Amendment issue. It in no way accuses the defendant of anything. I see it as part of the investigation and how he took the steps as an investigator he took in trying to figure this case out.

MS. ZMROCZEK: Thank you, Your Honor.

THE COURT: Yes.

MS. ZMROCZEK: I was very careful when I asked that question. I said independently-verifiable information. I was very qualified on that. I said I'm talking hospital records, hotel records. I said independently verifiable. I qualified the question the question that I asked. Because I -- trust me, I've watched six weeks of door opening. I'm very cognizant of

it, Your Honor. I'm very cognizant of it, which is why I asked the question exactly the way I did. Independently-verifiable information. We can have the court reporter read it back. That's exactly how I asked the question.

THE COURT: Mr. Scott?

MR. SCOTT: The assertation is that all he did was rely on the victim's statement. That simply is not true. That's absolutely not true. That is the assertation she's made time and time again that you solely relied on the victim statement in proving that anyone was in town and not in North Carolina.

THE COURT: All right.

Anything else?

MS. ZMROCZEK: Just, Your Honor, that I clearly -- I mean, I clearly didn't say that because I asked him about getting the hotel receipt and finding the hospital receipts. I was asking about independently-verifiable information.

THE COURT: The gist that I got from your questioning is he relied solely on Mr. Dubose and the victim in this case. He solely relied upon what the victim told him in making this case.

MS. ZMROCZEK: But I didn't say that. I

understand that -- that the state wants to insinuate that that's the implication. But in fact, I even asked him about going to the hotel, going to the -- getting cameras from Cary Shealy. I was very clear.

THE COURT: That's what I got from the testimony now. We can listen to the whole thing again. But that's the impression I got. That's the impression I think the jury would get that he had nothing else known other than what Dubose told him, and -- which is not correct because he also has a codefendant who he did some things with as well or he got corroborating information from or at least interrogated them as part of his investigation. So to exclude -- or to put him in a straitjacket like that, I think is misleading the jury.

MS. ZMROCZEK: And I -- and I understand -- and I appreciate the response. But just so the record is clear, Your Honor, I never said that he relied only upon that and, in fact, went through all of the independently-verifiable information, the cameras, the phone records that he didn't get, the cameras, got hospital records, and the hotel records. So clearly, I didn't say that he only

relied upon that.

THE COURT: Well, talking to Ms. Jones, is that a form of independent verification?

MS. ZMROCZEK: No, Your Honor. Not that I --

THE COURT: Well --

MS. ZMROCZEK: It's not independent verification -- it is not verified information. It's information that could be subjected to cross examination and should be subjected to --

THE COURT: Are we talking to -- he's an investigator. He's been doing his job a long time. He questions one -- questioned one defendant and then questioned and independently verified what one says versus the other and makes his decisions. I think that --

MS. ZMROCZEK: So Your Honor, if he opened -- if that opens the door, then I think that opens the door to everything that she told him.

THE COURT: Well, I don't know. I don't know whether -- would I agree to that extent. I don't know that.

But in your -- it's your line of cross-examination. And you're trying to lock him into that he's just going solely onto the defendant's word, which is not the case according

to the state's version of things. That doesn't necessarily mean that any and everything that Ms. Jones told him is admissible. But it relates to his investigation and how he came to that decision and who he talked with, and you know.

MS. ZMROCZEK: Your Honor, I just want to be clear. If they say so she acknowledged she was there, then I -- you know, I think that opens the door to and she said my client worked for NASA and she said that he killed her cousin and she said he did this and that.

THE COURT: I don't know. I don't know. I'm just saying that usually when -- when lawyers object, then they proceed as if they have that part of the case locked down, so therefore they can pursue that line of questioning as if -- as if the witness cannot go into an area that the judge previously ruled against.

If Ms. Harris had an instant transcript, I could look at it and -- and read all of those things. But I think that is the impression that I got from your question. I agree with Mr. Scott that you -- it would be unfair to prevent the officer from talking about his investigation as it relates to Ms. Jones and what he learned in

dealing with her, etc. I don't know how far you go into that. But, in general, I agree with Mr. Scott.

MS. ZMROCZEK: Your Honor, I respect your ruling. I just want to reiterate that I said independently-verifiable information, talking in the context of the hotel records that he got and the -- the medical records. Clearly, that's what I was asking.

THE COURT: Clearly, that might've been your intent, but you know, what appears to be clear is not always that clear. So the line of questioning on redirect that Mr. Scott is seeking to proceed on, I'm going to allow that. And then you make whatever objections and we'll take in whatever direction you decide with the jury. Trying to go as a result of having made those questions, proper line of questions. So we're going to take a break until 2:30.

And, officer, you cannot discuss your testimony during the break.

THE WITNESS: Yes, sir.

(A recess is taken.)

THE COURT: Ms. Zmroczek, yes, ma'am. I thought I was through ruling on your stuff.

MS. ZMROCZEK: You -- you were I'm sorry what?

THE COURT: I thought I was through ruling on your objection.

MS. ZMROCZEK: I -- I -- I believe that you were, Your Honor. I did e-mail you some case law because I really wanted to make sure that the record was clear. I e-mailed it to your law clerk. Sorry. You don't like e-mails.

THE COURT: What materials -- what did you e-mail?

MS. ZMROCZEK: I e-mailed *State v. Simmons*, which is a case that I tried in this very court room actually. It is cite -- I cc'd the solicitor as well, 430 SC 1, 841 S.E. 2d 845.

Your Honor, it's a case that I tried actually that the Supreme Court ruled that we did not open the door and that it was error. As well as *State v. Jackson*, which I did not try, 410 SC 584. It's a 2014 Supreme Court case. So Your Honor, I just wanted to make sure that -- that the record was as clear as it could be. Because I -- like I said, I've had this issue overturned in this -- in this very courtroom.

THE COURT: Well, let's look at *State v.*

Simmons and see what it's all about. Okay. He was convicted of second degree sexual exploitation of a minor. And the defendant did not open the door to evidence of suspected child pornography, contended the child pornography issue. (inaudible) separate can of worms.

Michael Simmons was convicted of six counts of sexual exploitation of a minor. He contends this provision is unconstitutional over oral argument. Additionally, he contends that the trial judge erred in refusing to suppress information gathered pursuant to the search warrant and in finding defense counsel opened the door to evidence of suspected child pornography that (inaudible) the validity of the statute and the validity of the search warrant. And they reversed because the judge erred in saying they opened the door.

Detective Kevin Murphy in the Berkeley County Sheriff's office investigating this child pornography and information in the computer connected to account of Ron and Wendy Doiron -- Doiron who lived in Columbia with a teenage son, two other children, joined the Army, finished Fort Jackson. Stayed in Columbia.

Murphy contacted investigators with the Columbia Police Department who got a search warrant for the residence. In the search warrant, they seized 20 electronic devices, including four items found in his bedroom, including computer hard drive.

John VanHouten, computer forensic examiner investigated. He did not review each one in the same manner that he employed a full examination on devices found in the bedroom, including the desktop, hard drive, etc. According to VanHouten, a forensic preview essential to a surface-level review, etc.

During his examination of the desktop, he was unable to determine from the videos depicting the pornography including the six videos Murphy traced to that IP address. However, he was able to find references to those videos which suggest that the files previously had existed on the desktop. And he found search terms associated with child pornography in international search history. Did a thorough examination and found videos in a recycle bin.

Informed law enforcement they didn't know anything about the images. And investigators

quickly focused on Simmons who denied downloading. He did admit to file sharing. He used a file sharing program to download music and videos, which were the same type Murphy used.

He said he let other folks use his computer. It wasn't password-protected. Doirons' teenage son often used the computer to watch videos. The son initially denied downloading illegal movies, etc. And he said that the son used it. Charged him with sexual exploitation of a minor, etc.

Direct examination, the state questioned VanHouten about the investigation confirmed. He examined all the devices listed in the search warrant. The items were previewed further examination. (inaudible) looking for. (inaudible) photos, etc.

On cross-examination, he readily acknowledged the investigation -- investigative officer he readily acknowledged and investigative officer directed him to focus on certain items.

Defense counsel characterized the devices as focused, which consisted on those found in Simmons' bedroom and examined unfocused, which were other items seized in the home and subject to only a preview. After defense counsel finished

cross-examining, the state asserted the door had been opened to the introduction of the eight videos found on the hard drive because defense counsel's question implied that VanHouten did not discover child pornography on any of the focused items.

In response, defense counsel noted that the solicitor had agreed off the record to not discuss the external hard drive and he asked the same question to the state, same question the state did during direct, whether pornography was found. The trial court agreed that the defense counsel cross-examine, implied that he did not find any videos of child pornography on the focus hard drive, focus items. Further, the Court relied on the fact that the (inaudible) was completed -- connected to computer. All right.

At the conclusion of the trial, they asked for a jury charge on third-party guilt, which was denied. He was convicted, got 10 years in prison. Trial court erred in finding that they opened the door, etc.

Simmons contend trial court erred in finding the defense counsel open the door regarding the eight videos on the external hard drive. The

state asserts the Court properly found defense counsel opened the door by implying he did not find anything on the focus items. The eight videos of the suspected child pornography were removed from the hard drive. (inaudible) party that introduce inadmissible evidence in rebuttal when the opponent places the fact at issue. The jurisprudence of this state contends a plethora of enlightened cases establishing and explicating the proposition that a defendant opening the door to what would otherwise be improper evidence.

Further, the defendant opens the door and the solicitors invited response is appropriate so long as it does not unfairly prejudice the defendant. Accordingly, the solicitor's response must be proportional -- proportional. We will not condone a thinly-veiled attempt to show propensity above way of the open-door policies -- open-door doctrine. And they look at for abuse of discretion.

Prior to trial, court granted a motion to suppress eight videos. On cross-examination, the trial counsel, who was where aware of the possibility of opening the door, carefully tailored his questions to track the State's direct

examination. Indeed, the questions regarding the contents of the desktop were effectively identical.

The defense counsel asked:

"And to be clear, this desktop, that he's charged with and that we've been talking about and that they were investigating, those were not found, those were not found on that laptop?

"No."

Immediately thereafter, defense counsel returned questioning VanHouton about each of the nonfocused items, which only underwent a preview examination. The theme of cross-examination was that law enforcement examine -- investigated Simmons to the exclusion of all other possible perpetrators.

After finding the defendant opened the door, the Court permitted the state to play all eight-point graphic videos for the jury despite the state noting during the pretrial motions that it did not intend to publish them.

Even acknowledging our generous standard of review in those situations, the defense counsel's questions was not sufficient to permit the state to introduce the previously excluded evidence in

rebuttal and the state had already elicited testimony from VanHouten on direct that there was no child pornography found on Simmons desktop. Once the state received this response, defense counsel was certainly entitled to drill down on that factor during cross-examination. The trial court ruling that defense counsel open -- same questioning on cross open the door to excluded evidence allowed them to what was prohibited from doing directly. Therefore, an abuse of discretion, we would reject the sequence of questioning implied VanHouten had conducted a full analysis, etc.

And we reject the state's response of plan all the videos for the jury far exceeded the proper scope, and therefore would be error. And it cited Bowman v. State based on the fact that the state responded proportionately when the defense opened the door. We hold the judge abused its discretion in ruling the door had been opened to evidence found on the external hard drive. All right.

We find constitutional and we reverse because the trial judge erred in finding the ultimate door to evidence of suspected child pornography and

demand for a retrial. And my good friend the Chief Justice concurs in part, the sentencing part. I would find defense counsel open the door to introduction of the testimony regarding the hard drive. The trial court properly refused to instruct. So he affirmed -- I said my good friend, Chief Justice. And the chief's opinion, there's evidence in the record to support the finding that defense counsel open the door. Initially, I would emphasize that the state made no reference to the external hard drive. In fact, when questioned a VanHouten about the desktop, the state carefully limited its questions by repeatedly referring to the desktop as "this device."

Defense counsel proceeded to ask him to list each of the 20 items seized for examination. Defense counsel pointedly questioned VanHouten about his examination of the desktop. In response, he testified no child pornography videos were found anywhere on the desktop. While defense counsel did not expressly refer to the hard drive. The trial court was correct and allowing the state to clarify this false impression on redirect.

All right.

Chief affirmed. Justice concurs with the Chief. So we have (inaudible).

You said this is your case?

MS. ZMROCZEK: It was, Your Honor.

THE COURT: They refer to US opinion in this --

MS. ZMROCZEK: I tried it with Mr. Banks.

THE COURT: Huh?

MS. ZMROCZEK: I tried it with Mr. Banks, Robert Banks.

THE COURT: Okay. Banks the pornography expert?

MS. ZMROCZEK: He's one of my best friends, Your Honor.

Not to cut this issue short, but as you were reading this decision, it was whispered to me that the co-defendant may have changed her mind. So this whole issue may be moot. I would still argue that if they want to ask him about what she said, I think that they can have the opportunity to recall him after she testifies, which I may need to do, too, as well to impeach her. So I -- I -- think we've delved into a whole different issue. Just when I thought we were going to be done today, Judge.

THE COURT: We have all week and next week and the week after.

So Mr. Dale Scott, what do you say or Mr. --

MR. WHITMIRE: Whitmire.

THE COURT: Whitmire.

MR. SCOTT: Judge, it doesn't -- the only similarities I see is the same defense attorney and apparently it was the same courtroom. But it looks like the prosecutor got hit in that one because he kind of overstepped what the judge was allowing.

Just following -- I read it briefly, Your Honor, while I was listening to you read it aloud. Looks like on direct, there was no pornography on the desktop elicited by the prosecutor. At some point, they ended up playing eight videos on a hard drive after they agreed not to do that. I am not seeking any such overkill in this particular case. I've heard some dicta that solicitor's reply must be proportionate.

So what we have here again, just to reiterate, in the cross-examination it was rather aggressively asserted, "Wayne Montgomery, the only evidence you relied on was the victim's testimony and his word alone. You didn't do anything else

to corroborate." That was asked multiple times.

I focus mostly on that last question: "Independent of the victim statement to you, you did no other research before you arrested -- before you drew the conclusion that he was guilty of these charges and you asked for these warrants."

Clearly, that's not the case. It's rather unfair for her to assert that in front of a jury and then be misguided. "Man, this Wayne Montgomery who's been in law enforcement 26 years, all he does is listen to one guy's recollection of events and he willy-nilly issues arrest warrants." That's not the case.

We have a codefendant who may or may not testify tomorrow. I always believe it when I see it. But she was interviewed rather extensively. She talked about things that nobody who was absent from the scene would know about. Okay? She -- she testifies to essentially what the victim testified to.

My question would be proportionate to -- if you call it door opening, I call it nongroup issue. I say it's nonhearsay. Proportionate redirect question would be: "You said you spoke

with Ms. Jones at some point. Did she admit to being present at the scene? Does she admit being -- her involvement in the crime?"

That would be it. I don't see that as violating *Bruton*. I think that's about as clear of an opening the door as I see on a regular basis. She was flirting with it and flirting with it. There was at least twice that -- that she made that assertation, again, rather aggressively that Investigator Montgomery stops when he hears what he wants to hear and goes no further.

THE COURT: All right.

MS. ZMROCZEK: And Your Honor, just to correct the facts, Mr. Montgomery and the arrest warrant reflect that that's actually what happened. The arrest warrant that I asked him on 8/7/2019. So the arrest warrant was solely based on what the -- the victim testified to. 8/7/19. He didn't -- he didn't interview Ms. Jones until 10/24/19.

So the question I asked was proper. After speaking with the victim and only speaking with the victim, you -- you issued arrest warrants? That's not an improper question. I have the arrest warrant right here where he looked at the

date and agreed with me.

THE COURT: I thought you asked him if he was basing his case solely on --

MS. ZMROCZEK: I never asked that.

MR. SCOTT: The last question I wrote down -- and I clearly defer to the court reporter -- well, I have to paraphrase, but it was: All the information independent of Dubose statement to you on August 5 when they checked out of the hotel, nothing independent of the victim's statement that you used to corroborate his version of events? Clearly, that's inaccurate.

And again, I think my redirect would be proportionate to the assertation and simply did she -- she admit to being present on the scene and she admit to her own involvement.

THE COURT: Well, my ruling of that: The door is open. And -- and I did not rule the extent to which -- as to each particular question to be asked. So I think my ruling is proportionatal. I think we're sort of dealing with apples and oranges. Whenever the Court is dealing these child pornography type of things and different folks have -- different folks access to computers in this particular case and trying to

pin it on one guy and someone else has access. I mean, the court went through a kind of long opinion to kind of nail down the basis for ruling.

And I don't think that's what we're dealing with here. We're dealing with the investigation of what the officer did. He indicated the investigation was ongoing. And he completely addressed also questioning and investigating Ms. Jones. And, of course, the defense objected to the witness even testifying that Ms. Jones was arrested or charged, you know. So the officer is not hamstrung with that.

My decision -- ruling is the same, this case notwithstanding. I see how Ms. Zmroczek would carefully craft a question based on her success in this case. But every tub sits in its own garden. This case is a different case.

MS. ZMROCZEK: And Your Honor, aside from the ruling -- this has nothing to do with that. Mr. Scott said the co-defendant may or may not testify tomorrow is what I think he heard -- what I think I heard him say.

THE COURT: I'll just stop you. I need all of the solicitors on the next case. (inaudible). I need to talk with all of them about going

forward with the jury on other cases this week.

MS. ZMROCZEK: And -- and -- and, Your Honor, just separate and aside from that, I may reserve the right to -- to need to recall the witness if they do. Because if the codefendant testifies, then I need to cross-examine her. And if she denies saying something, I may need to bring him back.

THE COURT: Whatever.

MS. ZMROCZEK: Okay.

THE COURT: Are y'all ready for the jury?

MR. SCOTT: We are, Your Honor.

MS. ZMROCZEK: Yes.

THE COURT: Bring the jury in.

(The jury enters the courtroom at 3:09 p.m.)

THE BAILIFF: The jury is seated, Judge.

THE COURT: All right.

Mr. Foreman, how is the jury doing?

THE JURY FOREPERSON: Doing well.

THE COURT: You are the spokesperson.

All right.

Continuing on. Redirect.

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Investigator Montgomery, is it safe to say

that all the parties in this case, at least when you were investigating, were largely transient people?

A Yes.

Q Okay. And homeless from time to time?

A That's correct.

Q I think there was testimony at some point earlier in cross-examination that the defendant may have been connected with the town of Orangeburg? I heard something about that. Did you hear that?

A He had a couple of different addresses. I believe Holly Hill, South Carolina, if I'm not mistaken.

Q And then the envelope found in the car was a Gaston address?

A Yes, sir.

Q There's been some testimony that he lived in Summerville at some point as well?

A Yes.

Q You ever found any connection between him and Hickory, North Carolina?

A No, sir, I did not until he was in custody.

Q Did you ever discover what he did with the phone he had at that time of this incident?

A No, sir. I did not.

Q So we don't know what ever happened to that

phone, do we?

A No, sir.

Q Cameras. Shealy cameras are very helpful when they capture a crime, aren't they?

A Yes. Very much so.

Q But oftentimes due to whatever angle they are, where they are placed, you may not get the crime in question?

A Correct. That's -- in this case, it wasn't in a position where it would have caught anything.

Q There were no cameras aimed out at the cemetery?

A No, sir.

Q And at least when I remember looking at them, they were along Elmwood, but not at Frontage Road that goes down towards the cemetery. Is that your recollection?

A Yes, sir.

Q In other words, if -- if I was able to get down Elmwood and go down -- it wouldn't capture me actually going into the cemetery?

A There -- yes. There's a couple of ways you can go into the cemetery without being seen on that camera.

Q There's one looking down Park Street. There

was one looking at Bojangles. But at least to my knowledge, I never saw any y'all ever found that showed the entrance to the cemetery?

A That's correct.

MS. ZMROCZEK: Objection to what the solicitor saw.

THE COURT: Let me hear the question again.

BY MR. SCOTT:

Q Were there any cameras that were able to film the entrance to the cemetery?

A No.

Q Okay. There's been -- there's been some talk about fingerprints on the car and some -- some assertion that if you found fingerprints that would've shown that they were there on that particular day. Is that how you understand fingerprint evidence to work? Can you tell when somebody left the fingerprint?

A No, sir.

Q Okay. So if you look with her example and you found my fingerprint on this Plexiglass. You understand I make my living in this courtroom and I'm here all the time. Would you be able to say for a fact Dale Scott touched that particular Plexiglass on the morning of Tuesday, April 4?

A No, sir. I could not tell exactly what date.

Q Same -- same with DNA. If you found somebody's DNA on this -- by the way, would that be unexpected to find my DNA, touch DNA, on that table since I'm here all the time?

A Absolutely not.

Q Okay. Would it be unreasonable or unexpected to find my fingerprints all of this courtroom?

A That would be expected.

Q Okay. What occurred to you when you began finding personal belongings of Martin Dixon within the car, within the Lexus, such as his medications, such as his medical records, such as his mail?

A That, to me, corroborated that he was inside the vehicle at various points in times as the victim had indicated.

Q Okay. But just to be clear, if you -- let's say you found one of his fingerprints on there. Could you say they have the technology to say that fingerprint was left there on April 7 or August 7, 2019?

A No, sir.

Q No. You can't time a fingerprint or DNA swab, correct?

A That's correct.

Q Just -- you mentioned earlier you spoke with

Michelle Jones after she was found in Hickory, North Carolina; is that right?

A Yes.

Q Okay. And did she admit to being at the scene of the crime when it happened?

A She did.

Q And did she tell you about her involvement?

A She implicated herself, yes, sir.

Q Thank you. That's all the questions I have for you.

THE COURT: All right.

MS. ZMROCZEK: Thank you, Your Honor.

RECROSS EXAMINATION

BY MS. ZMROCZEK:

Q She admitted a lot of things to you, didn't she?

A Yes, ma'am.

Q She admitted that Antrone Dubose killed her -- her cousin, right?

MR. SCOTT: Well, objection to hearsay. This is -- she's asking about direct statements by the --

MS. ZMROCZEK: Your Honor, based on my previous assertion, I will forgo this kind of questioning as long as I can recall him if

necessary.

THE COURT: Okay.

MS. ZMROCZEK: And I can move on. I just have a few more things.

THE COURT: All right.

BY MS. ZMROCZEK:

Q So can't time or date a fingerprint or DNA, right?

A Yes, ma'am. That's correct.

Q So why do we use them?

A It's -- it's another tool that we use. It is one of the tools.

Q Right. One of the tools that we use, right?

A Yes, ma'am.

Q To try to convict people?

A Not necessarily to convict people.

Q Because we can also use it to acquit people, right?

A In some circumstances, it can be or could be.

Q Right. So if Mr. Dale Scott's fingerprints are on here and we can't date them -- scratch that. I'll move on to a different question.

You testified to -- sorry, on redirect about -- sorry. I cannot read my handwriting.

You testified on redirect to the fact that

all parties in this case were transient?

A Yes.

Q Right?

A Yes, ma'am. I did.

Q And you can verify that at this time in August, all parties were transient?

A Which time, ma'am?

Q I'm talking about the time right now of the trial -- of the case, August 7. You -- you -- you can -- you verified that all parties were transient? They were all homeless?

A They were living inside the vehicle. They were living in the hotel for a short period of time. The said defendant had multiple addresses. So he was definitely fluid on where he was staying.

Q Okay. Because you verified that he had places to stay and was moving from place to place?

A It was information that -- that suggested that, yes, ma'am.

Q There was information that suggested that you did not follow up on. You just gave it to the fugitive task force and said go find him?

A I provided that information, yes, ma'am.

MS. ZMROCZEK: Thank you.

Nothing further, Your Honor, at this time.

THE COURT: Thank you, sir. You may step down.

THE WITNESS: Yes, ma'am. Thank you kindly.

THE COURT: And, ladies and gentlemen, I'm going to excuse you for the remainder of today. I need you back at 10 a.m. tomorrow morning. 10 a.m. tomorrow morning. Please do not discuss the case.

(The jury exits the courtroom at 3:18 p.m.)

THE COURT: All right.

So what's the plan? Where do we go from here with Mr. Dixon's case?

MR. SCOTT: I intend to spend the rest of my afternoon speaking with Ms. Jones and her lawyer and call her in the morning, God willing, Court willing, and rest my case after that.

THE COURT: And if she decides to plea, we'll do that at 9:30, if she decides to plea.

MR. SCOTT: Yes, sir.

THE COURT: If you call her.

Ms. Zmroczek.

MS. ZMROCZEK: I think there are some things I need to research, Your Honor, 'cause here is my concern: She wasn't going to testify and then she goes in front of the Court where there's a pretty

heated exchange where the Court's saying how much time she can get and she better think about it and yelling at her lawyer. And I've got to figure out how to -- because I'm certainly not trying to -- you know, I can't drag you into the case, but I've got to figure out the way to protect my client's rights and still --

THE COURT: Now, I didn't yell at her lawyer now. You know, I'm behind this glass enclosure. I have to speak so you can hear me.

MS. ZMROCZEK: Certainly. The tone of the delivery was certainly out of frustration. And I think you even said that you just frustrated that -- that they clog up the system.

THE COURT: Understood.

Mr. Forney is a -- is a seasoned public defender. He's -- he knows how to handle himself. He's fine.

MS. ZMROCZEK: He absolutely does. I'm not worried about him. I'm just worried about the effect that it may or may not have on my client. I just need to research that.

THE COURT: I understand. But she still have to -- just like he tried to object to me talking to the victim, he's not in this case. So you

likewise, you don't represent him. So -- I mean her.

MS. ZMROCZEK: I definitely don't represent --

THE COURT: You do your research and we'll see where it goes.

MS. ZMROCZEK: I will, Your Honor.

THE COURT: There's a lot of frustration particularly on a case like this where all of these people, each one of them have their own individual problems and issues. And you know, who may not well understand what's going on here.

MS. ZMROCZEK: And -- and that's part of my concern, Your Honor.

THE COURT: So far, the one with the most common sense is your person who we had the hearing on who you had some questions as to his competence. But he seems to be far more competent than any of the others.

MS. ZMROCZEK: And -- and that -- that's something --

THE COURT: That doesn't mean that he'd make the best decision either in this trial. Because he's facing -- he's facing the same thing everyone else's facing or at least his co-defendant.

What kind of plea offer did you make to -- make to this guy, Mr. Scott?

MR. SCOTT: You said 13. I recall 18 years based on his record, based on the age of the crime.

THE COURT: You know, the decision as to sentence is up to the Court unless it's a negotiated sentence. It's not up to the lawyers.

MR. SCOTT: Of course, this has no mandatory minimum, Your Honor.

THE COURT: So you know --

MS. ZMROCZEK: And Your Honor, I'm in the middle of a PCR right now that -- that discusses that we're not allowed -- it's not proper to have discussions about plea offers with the trial judge. So I need to read that as well before I step into another --

THE COURT: It's not proper to have -- discuss plea offers with the trial judge?

MS. ZMROCZEK: Jury trial. But again, I want to read the cases. I don't want to --

THE COURT: When you find that, please send it to me. I would love to read that as well.

MS. ZMROCZEK: I will. I will.

THE COURT: Because the latest cases even

before the beginning of trial, the judge discussed the status of the case and made sure the defendant wants a trial. I'm not -- I'm not suggesting at all that he changed his mind and not want a trial. I think that throughout the trial, it's not uncommon for someone to evaluate where a case is going and decide if they would try to -- see if I can work this out. That's civil and criminal.

MS. ZMROCZEK: Someone -- someone PCR'd to me. That's why -- that's the only reason I'm researching at Your Honor. So I mean, you know --

THE COURT: Whatever you find on that before or after this case, I would love to see it.

MS. ZMROCZEK: I will -- I will absolutely -- anything I send, I will send to your law clerk and to the solicitor as well.

THE COURT: Just some of these cases are tried that should not be tried. They need to -- because as I said, the person that gets the short end of the stick quite often is the defendant. I listened to the victim's testimony to the extent I could make out what he was saying. We'll go with what we have. And we'll take a break to see if he's going to -- I mean, the lady, Ms. Jones, pleading tomorrow; testifying tomorrow. Then,

we'll press on.

I am not trying to short-circuit anyone's constitutional rights and end the trial. I'm just making sure -- trying to make sure to the extent possible that everyone is focused on the issues a hand. Mr. Forney says that Mr. Scott never made a plea offer. You're saying that there's a plea offer of 18 years. I'm saying that whatever the sentence is, it's up to the judge, unless it's a negotiated sentence. So I make my own assessment as to what occurred and what I think the sentence should be.

And I think that in too many instances, the prosecution and the defense tried to control the sentence when the main issue is being -- is trying to control the guilt or innocence and in proving your case, not trying to -- but you know.

MS. ZMROCZEK: As I reminded the Court, I'm like the third or fourth attorney that was appointed on this case. So you know, I've been through all of those -- all of those discussions with Mr. Dixon ad nauseam.

THE COURT: When I started in prosecution -- and I was a defense lawyer and prosecutor, I had defendants coming to me asking what should they

do. "My lawyer wants me to plead guilty. What should I do?"

And I am the prosecutor. And I said, "Well, you need to hold out. I might be able to get you a better deal than that or whatever."

So times have changed, particularly with the PCRs and everyone complaining about everyone else and all of that type of stuff. So we're just moving right along. We'll be through with this case and Mr. Dixon will have his justice one way or the other.

MS. ZMROCZEK: Since we have a little time and he doesn't need to make his decision right now, would the Court like to use -- I know it's -- they haven't rested yet. Would the Court like to use just a little bit of time to --

THE COURT: Absolutely.

MS. ZMROCZEK: Thank you.

THE COURT: Mr. Dixon, let me talk to you about whether you want to testify or not testify.

THE CLERK: Would you raise your right hand please?

You solemnly swear that the answers you give to the questions propounded by the Court will be truth, the whole truth, and nothing but the truth

so help you God?

THE DEFENDANT: Yes.

THE COURT: All right.

Mr. Dixon, how are you doing today?

THE DEFENDANT: Doing okay.

THE COURT: All right.

Well, we've reached the stage in the trial or we will soon reach the stage in the trial where you would have the right to put up your defense. And that means you would have the right to testify or not testify. You understand that?

THE DEFENDANT: Yes.

THE COURT: So the Fourth Amendment to the Constitution provides that no person can be compelled to be a witness against themselves. That means that you cannot be required to testify.

Do you understand?

THE DEFENDANT: Yes.

THE COURT: But you do have the right to testify if you want to testify. Whether or not you testify is a personal right and no one can waive that right but you. In other words, you must make a personal decision after conferring with your lawyer as to whether you're going to testify or not.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: If you testify, the state will have the right to offer into evidence -- possibly have the right to offer into evidence certain criminal convictions that I understand that you have to impeach your credibility. We have not reviewed those. We can go into or whatnot, but you have a pretty long criminal record, right?

THE DEFENDANT: I guess, Your Honor.

THE COURT: You guess.

MS. ZMROCZEK: Your Honor, I don't believe anything is admissible. His last conviction was 2007.

THE COURT: All right.

MS. ZMROCZEK: So that was -- that would be over -- and certainly, Mr. Scott can disagree with me. But 2007 appears to be his last conviction. And there do not appear to be any crimes of dishonesty amongst those convictions.

THE COURT: All right.

So you may be able to testify without the jury knowing anything about you having a past record. Of course, that may depend on how you answer certain question as well. If Ms. Zmroczek

asks you if you ever been in trouble before and you say no, then that may change things. You know that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So have you talked with Ms. Zmroczek as to whether or not you should testify?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You want to be able to talk with her some more about it?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you have the right to talk with your family, friends, lawyer, or whomever you want to talk to. But the final analysis is up to you as to whether or not you testify. Do you know that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

We'll come back tomorrow on that. Do you have any -- any questions you want to ask me about it?

THE DEFENDANT: No, Your Honor.

THE COURT: You understand what I was saying -- asking?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Well, we'll talk further then.

Okay. So are we done now in this case for the day?

MR. SCOTT: We are, Your Honor.

MS. ZMROCZEK: Your Honor, just a few more things.

THE COURT: Yes.

MS. ZMROCZEK: I'm trying to preserve.

THE COURT: All right.

MS. ZMROCZEK: I did send a list of requested jury charges. But I now may need to add to that. I may need to add to that depending on what happens tomorrow. And so -- but I did want for the Court --

THE COURT: What kind of things have you sent me?

MS. ZMROCZEK: I think it's pretty much the standard things. However, I think the only things I probably need to point out are the -- well, three things. I asked for the *Logan* circumstantial evidence charge, which I think we asked for. The Court will certainly give it. I think I asked for the more lengthy reasonable doubt charge. And then, so the answer -- I put

attempted murder, which is obviously one of the charges. But Your Honor, only because I tried so many cases, I've had four different cases overturned on attempted murder issues. And I don't even know what the current charge is. So I was sending out a help signal to some people that are way smarter than I because I know there are issues with malice, specific intent, things like that. And so I -- now that I have little time today, I'll -- I'll do -- I'll propose a more specific attempted murder charge.

THE COURT: We have the perfect attempted murder charge.

MS. ZMROCZEK: You do? Oh, can you e-mail it to me? If I could see it, that would be fantastic.

THE COURT: We'll send it to you.

MS. ZMROCZEK: Thank you.

But other than that, I think it's all pretty much general stuff. I did put alibi in. But that's just going to depend on the testimony, if -- if my client testifies what testimony -- what evidence will be put forward on that. Obviously, that's kind of up in the air depending on once -- once all evidence is in front of the

jury.

THE COURT: I think we have the perfect one. Hopefully, she can find it.

MS. ZMROCZEK: Okay. Good. I'm sure you're -- cause I know you read all of these cases. There have been several changes.

THE COURT: Well, the main thing is you have a specific intent to kill.

MS. ZMROCZEK: A specific intent to kill. And then there's the issue of the malice definition in there. Because with -- with *Burdette*, it can't be -- I mean, there's no deadly weapon in this case. But the inferred malice charge, I think, has to be crafted in a certain way to not lessen the specific intent. And so I think that's probably that the only issue that's swirling in my --

THE COURT: You have to be concerned about whether they find him guilty of kidnapping.

MS. ZMROCZEK: Right. Right. Well, yeah.

THE COURT: Of course, kidnapping used to be mandatory life in prison. It is now 30 years. That's something that this jury would be interested in.

MS. ZMROCZEK: And -- and just in case I

forget, which I hope I don't forget --

THE COURT: Of course, you lock someone in the trunk of the car and set the car on fire, they may think that's attempted murder, too, if they believe that he did that. I mean, I don't know.

MS. ZMROCZEK: So I think -- yeah, I think a lot -- you know, some of the changes will just depend on how the testimony bears out tomorrow.

THE COURT: All right.

MS. ZMROCZEK: And I -- I think I'm going to sit down and shut up.

THE COURT: Good. Very good.

Any questions, Mr. Dixon?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. I'm going to -- how did he go from being so fuzzy yesterday to being so clearheaded today?

MS. ZMROCZEK: Lots of conversations, Your Honor.

THE COURT: Okay. All right.

We'll get together tomorrow morning.

First, we're going to talk with the other pending cases, so we'll know what to tell the jury. So we're through with you-all.

(The Court recesses for the day.)

CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: August 17, 2023

/s/Teresa B. Johnson

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	Case No.: 2020GS4001501, 2020GS4001502
State of South Carolina,	
vs.	
Martin Dixon,	
Defendant.	April 5, 2023

TRANSCRIPT OF TRIAL - DAY 3 OF 4

BEFORE THE HONORABLE CLIFTON B. NEWMAN
Circuit Court Judge, presiding

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

For Government: Christopher Dale Scott, Esq.
Senior Assistant Solicitor

John Walter Whitmire, Esq.
Assistant Solicitor

For Defendant: Aimee J. Zmroczek, Esq.
Attorney at Law

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P R O C E E D I N G S

(Court is called to order on Wednesday, the 5th day of April 2023, at 9:48 a.m.)

THE COURT: Ms. Zmroczek.

MS. ZMROCZEK: Good morning, Your Honor.

THE COURT: Morning.

MS. ZMROCZEK: Your Honor, respectfully, as a result of some things that were placed on the record and in front of my client and after having conversation with my client, I -- I -- I respectfully need to make some motions --

THE COURT: Okay.

MS. ZMROCZEK: -- at this time. I will be referring to this transcript excerpt. I understand that Your Honor has a copy. But since I'll be referring to it, I would like to go ahead and mark it as a Court's exhibit.

THE COURT: Okay.

MS. ZMROCZEK: Thank you.

(Court Exhibit No. 3 is marked for identification.)

MS. ZMROCZEK: Thank you.

Your Honor, the first motion that I have this morning is a motion for a mistrial. Generally, where bias and prejudice of the trial judge is

claimed, the issue must be raised at the time when the facts become known. And that's *State v. Charron*, 351 S.C. 319, 569 S.E. 2d. 388, Court of Appeals 2002. Generally, an alleged improper remark by a trial judge must be considered in context when determining whether it indicates sufficient bias or prejudice to require his or her disqualification. And that's *Shaw v. State*, 276 S.C. 190, 277 S.E. 2d. 140, 1981.

However, a defendant is entitled to a mistrial where arguments by the trial judge indicate a lack of neutrality and cannot be cured by instruction, that's where the defendant's testimony was referred to. Obviously, we're not talking about the defendant's testimony at this point. But any intimation by a judge in the presence of the jury -- and although this was outside the presence of the jury, it was in the presence of my client --

THE COURT: Hold. That's a -- you reading some law? Or you just kind of -- any -- read your sentence again. You're given me a half of a sentence and a lot of exceptions.

MS. ZMROCZEK: Yes, Your Honor. So -- and I was just trying to write my notes down.

THE COURT: Oh. You're reading your notes. You're not -- I mean, you're looking like you're citing some law.

MS. ZMROCZEK: Right. Well, these are just simply my notes, Your Honor --

THE COURT: Okay. All right.

MS. ZMROCZEK: -- as I make my argument.

THE COURT: Maybe start that last sentence over.

MS. ZMROCZEK: Okay. Certainly.

I think I believe I said a defendant is entitled to a mistrial where argument by the trial judge indicates a lack of neutrality and cannot be cured by instruction. Then the next sentence that I said was likewise, any intimation by a judge in the presence of a jury that a particular witness has committed perjury is a reversible error. This applies to whenever a judge indicates on the facts.

And so, Your Honor, the problem that -- so the mistrial motion is based on -- on several comments that were made --

THE COURT: None of what you said thus far is relevant to anything in this case.

MS. ZMROCZEK: So Your Honor, just to break

it down for you, not reading from my notes. Yesterday, as we all know, when the co-defendant was questioned by the Court asking if she was going to testify --

THE COURT: Right.

MS. ZMROCZEK: -- at that point, she stated that she intended to assert her Fifth Amendment right. And contemporaneously, her -- her public defender was expressing to the Court his concerns about his competency -- her competency. I don't know if that was actually a competency hearing because I do not believe that you had any of her evaluations in front of you.

THE COURT: It still hasn't been presented to the Court.

MS. ZMROCZEK: Right. Which still hasn't been presented to the Court. The things that were concerning to my client, Your Honor, were with -- with regard simply to what he expressed to me was -- was what he believed to be some bias and some comments on the facts was beginning on page 8, Your Honor, of the -- of Court's Exhibit 3. Actually, sorry. It's exhibit -- I had the draft, Your Honor.

So beginning where -- on page 12, sorry

Your Honor, the Court begins to -- was talking to the co-defendant and stating that anybody can have a -- a jury trial. You might get a -- actually, you were talking to my client, advising him that he's 53; he might get a life sentence.

Your Honor, after speaking to him --

THE COURT: Wait a minute. Are you citing the transcript?

MS. ZMROCZEK: Yes, Your Honor.

THE COURT: If you're going to recite the transcript, then you need to tell me the book and page number and let's look at the transcript.

MS. ZMROCZEK: Thank you, Your Honor. Page --

THE COURT: Not book and page but --

MS. ZMROCZEK: Page 12 --

THE COURT: Page and line number. Page 12, line what?

MS. ZMROCZEK: Two.

THE COURT: Two. All right.

"So it's pretty easy to say, 'Well, I'm not guilty; I want to have me a jury trial.' That's fine if you get found not guilty. But if you get found guilty, you're 53, you know, you might get a life sentence, especially as it sounds like you're

not in too good a shape healthwise and you have health issues.

"So it's easy for everyone to say, 'I want a jury trial. I'm not guilty,' as if the jury is just going to automatically find people not guilty, but it depends on the evidence. If you're found guilty, you know, you've got some serious consequences. And I'm talking more -- tell me that aunt's name back there again, your aunt. What's her name?"

So I'm not talking to this defendant, I'm talking to the co-defendant.

MS. ZMROCZEK: Okay. And -- and Your Honor, maybe I was confused. She's 37; he's 53. So that may have been some of the confusion.

THE COURT: Of course, I even -- I might have talked to him earlier. But I indicated that if someone's 53 and gets a sentence of 30 years, 60 years, it's, in effect, a life sentence considering the life expectancy of people who are incarcerated. It could be tantamount to a life sentence.

MS. ZMROCZEK: Certainly.

THE COURT: But if you're going to -- I haven't heard your motion for a mistrial. You

referred to the record, but you have to accurately cite whatever it is you're talking about.

MS. ZMROCZEK: Okay. And -- and -- and I'll get there. So I think the easier thing to do, Your Honor, is -- is to address the problematic -- what defense believes is problematic statements with regard to the neutrality and an opinion on the facts.

THE COURT: Okay.

MS. ZMROCZEK: So beginning on page 13, Your Honor.

THE COURT: Page 13. All right.

MS. ZMROCZEK: Line 4.

THE COURT: So the state -- so whatever -- this is me talking. Beginning on page 12, line 19.

"I'm talking to Ms. Beverly Rivers more than anyone else in here today. Because you can just say, 'I want a jury trial. I'm pleading the Fifth. I'm not going to say anything.' And when you have a jury trial, you don't have to testify. You can take the Fifth.

"And Mr. Scott he doesn't -- I mean, he would love to -- obviously, he picked out the guy he thinks is most guilty and he put him on trial.

"And you can want a trial, but you know, you might want to consider trying to figure out how to get out of this jam that you're in."

"Line 4: I don't know what her degree of culpability is. It is hard for me to believe that she would have beaten the man in the head and forced him in the trunk and all of that stuff. It sounds like she was just a third wheel here. I'm not sure what she did. What is she accused of doing?

"And Mr. Scott: She was -- as Mr. Dubose testified, she was active in beating him and forcing him into the trunk.

"So I said: She was out of control as well?

"Judge, this is just a preview as it was with Gabbie. Just an odd case and just people who were kind of doing bad things to vulnerable people."

All right.

MS. ZMROCZEK: And so, Your Honor, as far as -- he feels that you stating that you don't think that she could have been involved --

THE COURT: It's hard to believe that she -- that that lady standing before me could have beaten a man and forced him into the trunk.

MS. ZMROCZEK: Right. And -- and -- and so

that would be the --

THE COURT: And that was clarified by Mr. Scott saying that she was and by Mr. Victim who said that she was beating him too.

MS. ZMROCZEK: Right.

THE COURT: All right.

MS. ZMROCZEK: So obviously his concern is that the Court stating that your -- just what your beliefs were about the facts. Because, like you said, you would have a hard time believing it. And then questioning the witness as to what she did to him, Your Honor. Then --

THE COURT: You haven't given me anything.

MS. ZMROCZEK: Okay. Yes, Your Honor. The -- so -- the bigger issue, Your Honor, is that as she was ascertaining her Fifth Amendment right, the Court then not only speaks to her, but then speaks to her family, indicating that if she doesn't cooperate with the government, that she is going to get 60 years.

THE COURT: I didn't tell her that. I won't be doing her trial. Her trial will not be before me.

MS. ZMROCZEK: Right.

THE COURT: How can I tell her what her

sentence would be when I'm not her judge?

MS. ZMROCZEK: And throughout the -- throughout the -- throughout the colloquy, the Court reminded her that even though you may not be the judge, that if she does not cooperate, that she would get 60 years.

THE COURT: No. That's -- that's -- you're -- you're putting a spin on there that doesn't exist. I told her and I told your guy that the sentence is up to me. The solicitor said he recommended an 18-year sentence to your client. I said the sentence would be up to me, not up to the solicitor. I made that clear not only to this defendant, but also to the co-defendant if she pleads guilty. I don't care whether she pleads guilty or not. I don't care if he pleads guilty or not. It's not up to me. All the lawyers citing about the judge not being neutral and telling the jury this and all of that, you know, that does not apply to this situation.

MS. ZMROCZEK: Okay. And then, Your Honor, on page 13 beginning at line 15 to 20. So my -- my client asked me because as to really equal protection issues, he said that after hearing lines 15 through 20 that as he understands it from

what you stated on the record, that because he was a man and didn't have children that he was going to be in -- put -- end up in prison for a long period of time.

THE COURT: Say that again now? Are you reading something or are you just talking?

MS. ZMROCZEK: Yes, Your Honor. Page 13, lines 15 through 20.

THE COURT: Page 13, lines 15 through 20.

"The Court: Well, if you have all of these trials and people get end up in prison for a long period of time or you can figure out -- figure out a way that you can try to get out of this."

Again, I'm speaking to the lady, I imagine.

MS. ZMROCZEK: Your Honor, do you have the draft copy or do you have the final copy?

THE COURT: I have what you handed me.

MS. ZMROCZEK: I'm sorry. This is the one I'm referring to.

THE COURT: This says "excerpt." Line 13 --

MS. ZMROCZEK: Page 13 --

THE COURT: Page 13, line 15.

MS. ZMROCZEK: Line 15 through 20, yes, Your Honor.

THE COURT: "Well, you can have all these

trials and people can end up in prison for a long period of time, or you can figure out a way that you can try to get out of this."

I'm talking to the lady.

"Of course, I'm not -- I'll put a guy in prison a lot faster than I will put a woman in prison, especially a woman who has three children."

MS. ZMROCZEK: Right.

THE COURT: That's my view of it, yes.

MS. ZMROCZEK: Yes, Your Honor.

THE COURT: "And I'm not saying whatever should be the end result. But it is so easy to say, 'Well, I'm going to plead the Fifth. I'm not going to cooperate. I want me a jury trial. I'm thinking this is going to just go away.' And then you have a jury trial and if get found guilty, then you have some serious problems.

"Ms. Beverly Rivers, and if -- if she's got problems, you've got problems. And so you-all need to think hard. What else do you have to do -- let me see. What else do you have back there -- who else do you have back there with you?

"Ms. Rivers: Her husband and her son."

All right. Go ahead.

MS. ZMROCZEK: Thank you.

Your Honor, so his concerns regarding especially statements like that is that the way that it was reflected was that you were encouraging her to save herself and to -- and encouraging her family to talk to her about saving herself and -- and testifying for the state as a way to encourage her to testify to the state.

THE COURT: I think that's a fair interpretation that she needs to seriously consider her own interests with regard to this case. Whether, you know, I'm -- I'm certainly not -- if a person is going to testify, that doesn't intimate the person is going to not -- is going to make up a lie. I mean, if she testifies and -- I mean, the whole purpose of a trial is a truth-seeking process.

She testifies. And you cross-examine her. She tells the truth or she tells a lie. None of that's up to me. And I don't care she testifies or not testify. I'm speaking to her.

She comes up in the purpose of the hearing that you requested, I believe. And then you had Mr. Forney here as well that I conduct a hearing outside of the presence of the jury to determine

whether or not she intends to assert her Fifth Amendment. That's what we did.

So at that point, she has my attention, not your guy. I'm talking to this co-defendant. And she can testify or not testify. But she's facing the same thing that your guy is facing: Up to 30 years for kidnapping and up to 30 years for attempted murder.

MS. ZMROCZEK: She's actually facing an additional 15 for the arson.

THE COURT: Okay.

MS. ZMROCZEK: Sorry.

THE COURT: Plus 15 for arson. She's facing 85 years. And she is the mother of three children and a person with diminished mental capacity. And her lady who was here with her is her caretaker. And they need to give serious consideration to her well-being.

As I said, the lawyer will go home.

MS. ZMROCZEK: And -- and -- and --

THE COURT: And she may or may not go home. And I will not be doing her case. I'm -- this is -- you know, this -- I'm doing this guy's case, your guy, Dixon. I don't anticipate doing her case. We're certainly not going to do it this

week.

MS. ZMROCZEK: (inaudible), Your Honor.

THE COURT: If I were to do a recusal, I would recuse myself on her case. She's the person I'm talking to. I could care less about your client's view of it, of me having a conversation with this lady.

MS. ZMROCZEK: I understand. And -- and -- and -- and understand I'm simply just trying to place the concerns on the record, Your Honor.

When you -- on page 14, when you indicated that you would -- you might call -- line 25, that you might call Reverend Nelson Rivers who was also the head of the NAACP and ask him what he wanted to do with her, again, my client took that as an impartiality to the co-defendant and encouraging her to testify against him when she --

THE COURT: Of course, she said she didn't know Nelson Rivers. And her -- and her -- none of them know him. So their names are Rivers. And they're from North Charleston. And he is the pastor of the church in North Charleston.

MS. ZMROCZEK: And actually --

THE COURT: And the civil rights guy who led the march to take the Confederate flag off of the

Capitol and a person who I respect.

MS. ZMROCZEK: But certainly, Your Honor --

THE COURT: And -- and if he was related to them --

MS. ZMROCZEK: Well, on page --

THE COURT: -- I would love to have him tell me something about that lady. But as it turns out, they apparently don't know him. And they might not be related. She said that he was related to her. What she said?

MS. ZMROCZEK: Boy cousin, page 5, line 16.

THE COURT: He's related to her boy cousin.

MS. ZMROCZEK: Well, she said on page 5, line 16, "He's my boy cousin."

THE COURT: He's your boy cousin.

MS. ZMROCZEK: That's correct.

THE COURT: Whatever that means. Then she said she didn't know him.

MS. ZMROCZEK: Right.

THE COURT: And her caretaker, her aunt, doesn't know him.

MS. ZMROCZEK: Certainly. So Your Honor, so just to establish the record and -- and protect my client, based on --

THE COURT: The record is already

established.

MS. ZMROCZEK: Certainly.

THE COURT: You've gotten a copy of it.

MS. ZMROCZEK: And I meant to say to protect it, that he just had some concerns about the way that the hearing was conducted. He felt like the Court was coercing her into testifying.

THE COURT: I'm encouraging her to give serious consideration for her own well-being, which she can testify or not testify. I don't care. It's not up to me. I'm explaining to her when she comes to court, she's charged with these serious crimes. Her lawyer says that he -- in effect, he hasn't had any discussions with the solicitor regarding resolving the case. And the solicitor says he had a confession from her.

MS. ZMROCZEK: Certainly. Your Honor --

THE COURT: You did say that, Mr. Scott, didn't you?

MR. SCOTT: I sure did.

THE COURT: Yeah. The solicitor has a confession from a co-defendant who is facing the same charges and -- and she's going to take the Fifth Amendment and not testify. She needs to give serious consideration as to what impact that

will have on her case. And that's for her to determine.

MS. ZMROCZEK: And I -- and I believe as Mr. Forney was telling the Court that his, and quite honestly, my interpretation of -- of the confession is questionable, which obviously will come out in trial. But you can only rely on what is presented to you at the time.

But Your Honor, for those reasons, the reasons of an apparent comment on the facts and -- and some bias, some perceived bias for the co-defendant and encouraging her to testify, Your Honor, those would be the reasons for the mistrial request.

THE COURT: Bias -- favor of the co-defendant --

MS. ZMROCZEK: Yes.

THE COURT: -- or that's your opinion?

MS. ZMROCZEK: In favor of encouraging her to testify.

THE COURT: All right.

Mr. Scott?

MR. SCOTT: I always found it to be very unbiased, very neutral, Your Honor. I think what you did yesterday was 100 percent appropriate.

Everything you said was 100 percent accurate. I hope she testifies; they hope she doesn't. We'll see what happens.

THE COURT: Well, I deny the motion. The record speaks for itself. I can understand that a defendant who may not fully comprehend everything may -- may have a feeling one way or the other. But all of this has take -- took place out of the presence of the jury. And I did what I thought was appropriate in questioning that co-defendant as to whether her decision on testifying or not testifying.

It appeared pretty bizarre to me when she comes and says "God told me to take the Fifth." And considering her mental problems and considering the fact that she was evaluated three years ago and the -- and her lawyer has yet to present that competency issue finding before the Court, I can make my own determination as to her competency and her understanding of everything, including her right to testify or not testify and her understanding of or her -- trying to get through to her an understanding of what might apply with regard to her own case. And I have to speak to people at the level that they're at. And

hopefully, I gave them something seriously to consider.

MS. ZMROCZEK: Thank you.

And Your Honor, as I'm making these motions, obviously I'm in a difficult position. But certainly under my oath and requirement under the --

THE COURT: What makes your position so difficult?

MS. ZMROCZEK: Well, because, Your Honor, the next motion that I have is my client has requested that I ask the Court to recuse itself from his trial. And the reason being that if she -- if the co-defendant -- and this may be premature. But if the co-defendant does testify, when I cross-examine her, I'm going to have to ask her what affect the comments of -- of the Court encouraging her to think about it hard after she had already asserted her right. For example, if she testifies and I say, "As of yesterday, 18 hours ago, you had not intended" --

THE COURT: How would that help the jury to determine whether she's guilty or not guilty?

MS. ZMROCZEK: Because it goes to the bias.

THE COURT: Whether he's guilty or not

guilty.

MS. ZMROCZEK: Well, because it would go to the bias of her testimony, Your Honor, and her motives for testifying one way or the other.

THE COURT: Okay. It will be an interesting examination or cross-examination.

MS. ZMROCZEK: So what I fear will happen is -- and again, I don't know what she says, but did the Court tell you that you were, you know, going to get -- that you could get --

THE COURT: You can ask her whatever you want to ask her.

MS. ZMROCZEK: Certainly.

THE COURT: It's cross-examination.

MS. ZMROCZEK: The problem is that if she denies that, then I would have to, then, call the Court as a witness to say what he --

THE COURT: Well, that won't happen.

MS. ZMROCZEK: Right. I -- I understand, which is -- which is why I had to again raise that recusal motion at this time.

THE COURT: I deny the motion.

MS. ZMROCZEK: Thank you.

Your Honor, the next -- I think the next motion deals with her competency. I think at this

point, her competency needs to be addressed. I have some -- obviously, I have some concerns about her competency just from watching. I know you haven't had the benefit of watching her interview yet, which I fully intend to introduce at trial and play for the jury when it becomes appropriate.

But -- but even yesterday, when you kept asking her how old she was and she was saying she was born and that she was born in the hospital and -- and as you noted had some difficulty understanding what you were asking her. So I think that this time, we do need to address her competency. In addition to my concerns --

THE COURT: Okay. Where is she?

MS. ZMROCZEK: I'm sorry?

THE COURT: Where is she?

MS. ZMROCZEK: Your Honor, I have no idea.

THE COURT: How can we address those if she's not here?

MS. ZMROCZEK: I'm assuming she's in the hall as all the other sequestered witnesses are, Your Honor. I can go check. I don't have anybody to run for me. I can certainly go and check.

MR. SCOTT: I think that's where Investigator --

MS. ZMROCZEK: Okay. Thank you.

THE COURT: You keep talking. I just wondered where is she.

MS. ZMROCZEK: Okay. So Your Honor -- so Your Honor with the issues with her competency and the statements that her own attorney made on the record about his concerns for competency, I think that, A, the Court needs to address her competency --

THE COURT: Well, I did address her competency. I will address it in greater detail when the mental health evaluation is presented to the Court.

MS. ZMROCZEK: Right. Right. And I think that that --

THE COURT: Do you have a copy of it?

MS. ZMROCZEK: I don't have a copy of it. I would like a copy of it. I think that I'm entitled to it as well as any mental health records that -- that -- that --

THE COURT: You're raising the issue. You must -- have you tried to get a copy of it from the state?

MS. ZMROCZEK: I have not from the state, Your Honor. Actually, I have from the state. I

don't think that they have a copy of it. Well, I've asked for all of her statements, Your Honor. But I have asked for -- for a copy of not only her medical -- mental evaluation, but also her mental records that are in the custody and control of Mr. Forney. And he advised me --

THE COURT: You had him here all day yesterday. Where is he now?

MS. ZMROCZEK: He's outside the courtroom, Your Honor, would you like me to bring him in?

THE COURT: It's up to you. You're -- you're --

MS. ZMROCZEK: And he advised me that he was not going to turn those over because of HIPAA requirements. But I believe that those have been waived yesterday. When the Court was speaking again to Ms. Jones, you asked her if she ever been in any mental institution. And she indicated that she had been in one a long time ago, and then said two, three, four, five. And obviously, I think that that is grounds for, you know, potential impeachment.

THE COURT: The threshold is not that -- on her competency to stand trial, is that --

MS. ZMROCZEK: No, no.

THE COURT: You want me to make a determination on her competency to stand trial --

MS. ZMROCZEK: No, Your Honor.

THE COURT: -- or her competency to be a witness?

MS. ZMROCZEK: Competency to be a witness, Your Honor.

THE COURT: Okay. All right.

Mr. Forney, where's your client?

MR. FORNEY: She's on her way in. She's down -- she was downstairs.

MS. ZMROCZEK: And Your Honor, I believe that -- as you know, Rule 601 of the South Carolina Rules of Evidence that governs the competency and disqualification as a witness.

THE COURT: What about it?

MS. ZMROCZEK: Well, Your Honor, under Rule 601(a), every person is competent to be a witness except as otherwise provided by the statute or Rules of Evidence.

The Court presumes the witness to be competent because bias and other defects in the witness testimony revealed primarily through cross-examination affects the witness' credibility and maybe waived by the factfinder. And that's

State v. Needs, Southeast -- excuse me, South Carolina 134.

Obviously, her attorney believes that she still has competency issues. And after seeing her inability to maybe -- to answer your questions about how old she was, where she was from, we would certainly ask that the Court at this time inquire -- and again, I talked to the state just this morning to ask if they had any additional updated statements. They did provide me something that she said that was different than -- than that's in her interview. And so it's indication to me that she does intend to testify. So I think at this point, we probably need to establish if she does or does not intend to testify. And if she does --

THE COURT: Well, based on my colloquy with her, I do not find that she's disqualified under Rule 601. If you want to question her concerning your view that she -- that she's incapable of testifying and understanding the duty of a witness to tell the truth and then that she's incapable of expressing herself concerning matters before the Court, you -- you have that leeway to ask for those questions if you want to.

MS. ZMROCZEK: During cross-examination?

THE COURT: No. Right now.

MS. ZMROCZEK: Okay. Thank you, Your Honor.

THE COURT: You're the one who's interested. I'm satisfied that she meets the test and that she is qualified. Every witness is competent to testify except as provided -- otherwise provided by the rules.

I've talk with her. As I stated, each of these people have some mental deficiencies. And your client, who you profess to be incompetent, I indicated has -- appears to be -- have a higher competency level than the other two, including Ms. -- Ms. Jones.

But Ms. Jones expressed herself sufficiently to me such that I believe she can testify. If you want to put anything else on the record and ask her some questions --

MS. ZMROCZEK: I would, your Honor. And I would call her.

THE COURT: Hello, Ms. Jones.

MS. JONES: Hi.

THE COURT: Hi. Come on down here.

MS. JONES: Yes, sir.

THE CLERK: Swear her in?

THE COURT: Yeah, she wasn't sworn before.

THE BAILIFF: Place your left hand on the Bible.

THE COURT: Do you have the --

THE BAILIFF: No, that's your right. That's your right hand. Place your left hand on the Bible and raise your right.

THE COURT: -- the competency evaluation? It must be filed with the Court. As I said yesterday, it must be presented to the judge. The Judge ordered an evaluation, the Department of Mental Health to do an evaluation and a copy of the report must be presented to the Court. They just -- they happen to mail them to the parties, but it's incumbent upon the parties to present those to the Court. And I need a copy of her mental competency evaluation so I can make an official determination on the record concerning her competency to stand trial though she is not on trial in this case.

Go ahead.

THE BAILIFF: Place your left hand on the Bible, raise your right and face the clerk.

THE CLERK: State your full name please.

THE WITNESS: Michelle Latoya Jones.

THE CLERK: You swear you tell the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you.

Have a seat right up there.

THE BAILIFF: Watch a step up there.

THE CLERK: Speak into the microphone.

THE BAILIFF: Step up there. Step up there. Please speak loudly in that microphone because the judge (inaudible). The court reporter's got to hear you. All right? Okay.

MICHELLE JONES

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MS. ZMROCZEK:

Q Good morning, Ms. Jones.

A Good morning.

Q I just have a few questions for you right now, okay?

A Uh-huh.

Q Ms. Jones, do you understand that when you're under oath, the importance of telling the truth?

A Yes.

Q Do you know the difference between the truth

and a lie?

A Yes.

Q And what happened if you don't tell the truth while you're under oath?

A If you do not tell the truth, you go to jail. And if you do tell the truth, you're not going to jail. It's up to the judge if he decides to let you go or not.

Q Okay. And so I want to ask you about the events of August 7, 2019. Do you remember that day?

A Yes.

Q What type of medication were you on that day?

A I was on Depakote, Metformin, lisinopril, Risperdal, and Ativan.

Q And -- and that -- you recall testifying yesterday when the Court was asking you questions?

A Uh-huh.

Q You have to say "yes" or "no"?

A Yes.

Q Okay. Thank you.

And you listed those medications as what you're taking today, right?

A Yes.

Q And you told the Court that you had been on a bunch of medications before that?

A Yes.
Q But that they had finally gotten the right --
A The right one.
Q When did they get the right one?
A It's been a long time.
Q Okay.
A MUSC had to figure that out.
Q Okay.
A In Charleston.
Q You don't remember when they got -- they got the right one?
A They finally -- they finally got the right one when I was, like, in my twenties.
Q Okay. When you were in your twenties. So since your twenties, you've been on all of those medications?
A Uh-huh.
Q And you take them as prescribed all the time?
A Yes. Yes.
Q Okay. And so do you remember -- what do you remember about August -- what do you remember right before going to the cemetery? Where were you?
A In the cemetery, I was in the car.
Q Before you got to the cemetery, where were you?

A Before I got to the cemetery?

MR. SCOTT: Your Honor, my only objection would be this is a proffer to see if she is competent as a witness.

Now, we're getting into the --

THE COURT: I -- I agree. This is beyond the scope of making a Rule 601 determination. Objection sustained.

MS. ZMROCZEK: Okay. Your Honor, I was simply trying to see if she was able to perceive the event with a substantial degree of accuracy, remember it, and communicate about intelligently.

THE COURT: I understand what you're trying to do. I sustain the objection.

MS. ZMROCZEK: Thank you, Your Honor.

I have no further questions.

THE COURT: Anything from the state?

MR. SCOTT: No, Your Honor.

THE COURT: All right. You can step down, ma'am.

MS. JONES: Thank you.

(A recess is taken.)

MS. ZMROCZEK: (inaudible) so we don't have to take a recess so I can review them and use them as potential impeachment evidence that -- that are

in the possession of the -- Mr. Forney if he turned over to me at this time.

THE COURT: So what do you want me to do?

MS. ZMROCZEK: I'm sorry?

THE COURT: What do you want me to do?

MS. ZMROCZEK: I have asked Mr. Forney. He has indicated he will not turn them over unless ordered to do so by the Court.

MR. FORNEY: That's correct, Your Honor.

THE COURT: Mr. Scott?

MR. SCOTT: I think she can cross-examine Ms. Jones to the extent she needs to.

We're ready to proceed.

THE COURT: All right.

I will reserve ruling on that issue.

MR. SCOTT: Thank you, Judge.

THE COURT: Bring the jury in.

(The jury enters the courtroom at 10:59 a.m.)

THE BAILIFF: The jury's seated, Your Honor.

THE COURT: All right.

Good morning.

Sorry for the delay. We had some other matters to address. We're now ready to proceed.

You may call your next witness.

MR. SCOTT: The state calls Michelle Jones.

THE BAILIFF: Come forward down here. Down this way. Ma'am -- ma'am, come this way to be sworn.

Place your left hand on the Bible, raise your right, and face the clerk for me.

THE CLERK: State your full name, please.

THE WITNESS: Michelle Latoya Jones.

THE CLERK: You solemnly swear the testimony you are about to give in this case will be the truth, the whole truth, nothing but the truth so help you --

THE WITNESS: Yes.

THE CLERK: -- God?

Thank you.

Have a seat right there.

THE BAILIFF: Step up. Step up.

MICHELLE JONES

having first been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Good morning, Ms. Jones. How old are you?

A I am 37.

Q Okay. And you're from Charleston?

A Yes.

Q Okay. You know Antrone Dubose?

A Yes.
Q Are you related to him?
A Yes, boy cousins.
Q He's your cousin?
A Uh-huh.
Q Okay. And do you know Martin Dixon?
A Yes.
Q How do you know him?
A He is my boy cousin.
Q Did he use to be your boyfriend at some point?
A Ex.
Q He's your ex-boyfriend?
A Uh-huh.
Q Okay.
A When I find out he was my cousin.
Q Okay. So he and you used to be boyfriend/girlfriend and you found out you were related?
A Yes.
Q Okay. You were on -- you were just asked recently, but you're on some medications; is that correct?
A Yes.
Q And what are you prescribed?

A I take Metformin, Ativan, Benzo, Depakote. All that medication, I'm taking.
Q Okay. You are -- you have bipolar disorder?
A Yes.
Q And you've been --
A Schizophrenia.
Q -- diagnosed with schizophrenia. Okay. And do you know what age you were diagnosed with schizophrenia?
A No. Recently.
Q Okay. What about bipolar disorder?
A I had it all these years.
Q When you -- you were a little girl when you were diagnosed?
A Yeah. I was born with it.
Q And then, you started taking medication as a young girl?
A Every since I was a little girl.
Q And I understand you dropped out of school in ninth grade; is that right?
A Yes. I dropped out of school in the ninth grade to be with a boy.
Q Okay. And did you get your GED?
A Yeah. I had got my GED from Columbia.
Q Okay. So how long have you known Martin

Dixon?

A For a couple, a few months.

Q You've known him for a few months? What age were you when you met him?

A I would say about three years.

Q No. How old were you when you met Martin?

A Oh, how old? I was like 34.

Q Okay. And you're 38 now?

A No.

Q I'm sorry?

A Thirty-seven.

Q Thirty-seven. Okay. I'm sorry. I gave you an extra year.

So you -- you remember -- you know why we're here today, right?

A Yes.

Q And we'd been talking all week about how Antrone Dubose ended up in the trunk of his own car?

A Uh-huh.

Q Do you remember coming up from Charleston to Columbia?

MS. ZMROCZEK: Your Honor, I would object to the leading.

THE COURT: Don't lead the witness.

BY MR. SCOTT:

Q Do you remember coming up from Charleston to Columbia?

A Yes.

Q Okay. And who was driving -- who was driving when you came up?

A Anthony Dubose.

Q Okay. Now when you say "Anthony Dubose," is that what you call Antrone Dubose?

A Yeah.

Q Is that -- you always call him Anthony?

A Uh-huh.

THE COURT: Ma'am, use your words. Yes or no.

THE WITNESS: Yes.

BY MR. SCOTT:

Q So Anthony was driving. And did -- was Martin Dixon with you too?

A Yes.

Q And where did y'all stay when you got to Columbia?

A We went to Columbia and we ride around and we stay in a hotel in Columbia and stayed in there. And Martin wanted me to try some ice. And I told him no and I didn't want none --

Q Okay.

A -- at all.
Q Wait -- wait one minute. What is ice?
A Ice mean -- is a sex drive.
Q Well, let me back up before we get there. You checked into a hotel, you said?
A Uh-huh.
Q And who paid for the hotel?
A I did.
Q Whose name did y'all use to check in?
A I used my name.
Q You used your name to check into the hotel?
A Uh-huh.
Q Did you ever go to a hotel where you used Martin Dixon's name?
A One time.
Q Okay. And who paid for that hotel?
A I did.
Q And who told you to pay for that hotel?
A I decided to pay for the hotel.
Q Okay. Were there times when Martin Dixon was asking you for money to pay for things?
A He said he wanted to pay the hotel. I told him I got it.
Q Okay. How do you get your money?
A I get it from Social Security. And I work

half time, part time at Church's Chicken.

Q Okay. Let me -- I think I need to back up just a little bit. Was there a time when there was something that went wrong with the car? Was there some flat tire or something?

A Yes. I fixed all of that. I fixed everything on the car.

Q You're talking about Anthony Dubose's car?

A Dubose car. I gave him money. Took it off my card, gave him gas money, fixed everything on the car and everything to get us up there.

Q Okay. And so that was on the way from Charleston to Columbia?

A Yes.

Q And did -- did you ever tell Anthony he needed to pay that money back to you?

A I asked him if he's going to pay me the money back to me. And Martin said, "You have to pay this girl money back. And if you don't pay this girl money back, I have to beat you up."

Q Okay. And do you remember when that argument happened? Do you remember where y'all were?

A It was like behind the building.

Q Okay. Do you remember anything about the building?

A It's a alley.
Q Okay. And did -- did either one of them -- did a fight happen after that or what?
A Martin hit him.
Q Martin hit --
A And he boxed him.
Q Okay. Wait. Martin hit who?
A Martin hit Anthony.
Q Okay.
A And beat him up and boxed him and kicked him.
Q All right.
Did you kick --
A I watched it.
Q Okay. Did you kick or hit too?
A No. I watched it.
Q All right.
A I backed up.
Q Did you ever see Martin use anything besides his hands to hit?
A He hit his fist and then he had a crowbar.
Q A crowbar?
A Uh-huh.
Q What color was the crowbar. Do you remember?
A Black.
Q And where did he hit Anthony with the

crowbar?

A Crowbar. This side. (Indicating).

Q You saw him hit him in the head with it?

A Uh-huh.

Q All right. And then what happened after he hit Anthony Dubose with the crowbar?

A When he hit him with the crowbar, then he told me -- he threatened me and said, "You better put him in the trunk. If you don't, I'll kill you."

Q Okay. So then what happened?

A So I ain't had no choice but to put him in the trunk.

Q How did you put him in the trunk?

A Me and Martin had to lift him up and put him in the trunk.

Q Y'all -- okay. This is -- who -- who were you putting in the trunk?

A Anthony.

Q Okay.

A I ain't had no choice. He threatened me.

Q And what was -- this was all because of the money he owed you?

A Yeah. He -- he did it because -- Martin did it -- he decided. And Anthony Dubose decided that Anthony didn't wanted to be in the crew.

Q Okay. But did it have anything to do with the money here?

A No. It didn't have to do with the money.

Q Okay.

A He said he wanted to get out of the gang. That's all he said.

Q After -- did -- did anybody shut the trunk of the car after Anthony -- Anthony Dubose was in it?

A Yes.

Q Who closed the trunk?

A I didn't close the trunk. He did.

Q Who's "he"?

A Martin Dixon did.

Q Okay. Did Anthony Dubose -- was he making any noises while he was in the trunk?

A Yeah. And he pressed -- Martin drove it and he press the brakes back and forth, back and forth. And he swerved back and forth, back and forth. He swerved to make him shut the noise up.

Q What was -- what kind of noise was --

A He was making a lot of noise.

Q He was --

A I was -- I was scared. I was scared in the front seat.

Q Okay. And you said Martin was driving?

A Yes. He was driving. He was driving crazy.
Q When he was doing all of that, did you see Antrone or Anthony Dubose making any noises from the trunk?
A Yeah, he was. He was. That's why he pressed the brakes back and forth, back and forth to make him shut up.
Q What kind of noise was he making?
A "Help. Help. Somebody help me."
Q Okay.
A I can't help him if Martin won't let me help him.
Q Okay.
A He'll kill me.
Q Okay. Where did Martin drive the car?
A Martin drove the car by a gravesite.
Q Had you ever been to that graveyard?
A No, that was my first time.
Q Describe -- tell me what you remember about the gravesite.
A The gravesite is like a hill.
Q Okay. Describe that some more.
A It's like a tall hill, like a freeway.
Q A freeway on the side?
A Yeah. Like an interstate.

Q Okay. What else do you remember about the graveyard once y'all got there?

A I saw two people was underneath the bridge.

Q Okay.

A They were walking by. Martin was still driving the car. He said he was going to bury him right there and underneath the ground. And I said, "Martin, no, don't do that. You don't have to do that. You go to the police --"

Q Okay.

A "And take him to the police." But he didn't.

Q Did he -- did he eventually stop the car?

A No. He didn't stop the car.

Q Okay.

A He stopped the car right after when we got to the end of the hill.

Q And -- and is that in the graveyard?

A Uh-huh.

Q And then when he stopped the car in the graveyard, you say at the bottom of the hill?

A Yes, the top of the hill.

Q Top of the hill. Once he stopped the car at the top of the hill in the graveyard, what happened?

A First, he said he wanted -- first, he said he wants to crash the car.

Q Where?
A Over the hill.
Q Okay.
A That's what Martin Dixon said.
Q What did he ultimately decide to do?
A And then he said -- I told him no, don't do that because that's not right to do that, to mess that boy car up or whatever. That's not cool.
Q All right.
Let me ask you, so once the car stopped, do you or Martin get out of the car?
A He got out the car first.
Q Okay.
A He asked me do you know how to jump out of the car.
Q Okay. Did you -- but did you -- when -- did you eventually get out of the car after Martin Dixon did?
A No. He got out first, then I got out.
Q All right. Martin Dixon got out of the car and then you got out. And is Antrone Anthony Dubose still in the trunk?
A Yeah.
Q All right. What ended up happening next?
A Anthony Dubose specifically said -- he was

screaming for help. Screaming for help. But Anthony Dubose killed Tony Dickerson, even though he did, my cousin. Y'all should know the truth.

Q No. What I'm asking you about is what did Martin Dixon do after the two of y'all got out of the car?

A When I got out of the car, Martin wanted to light the car on fire. He said this is how if you snitch on people like this.

Q All right.

He said he wanted to light the car on fire?

A Yes.

Q Did he do anything to try to light the car on fire that you remember?

A Yes. He put the paper in the -- in the -- in the tank.

Q Uh-huh.

A And then he had a lighter, and he lighted it up.

Q All right.

Do you remember there being paper being lit and thrown inside the car?

A Yep.

Q Who did that?

A Not me, Martin.

Q Okay. And did you see him do that?
A Yeah.
Q Okay. What -- was Mr. Dubose making any noise from the trunk at that point?
A Uh-huh.
He was crying for help. I couldn't even do nothing. Martin would kill me.
Q Okay. But you were there when -- when that happened?
A Yeah, I was there. I watched it.
Q Where did you and Martin go after he tried to set the car on fire?
A Martin -- we went to Ms. Clorine Darby mom house.
Q Who's that?
A His mama house.
Q Okay. How did you get there?
A His mom picked us up from Columbia.
Q Okay. And she -- where does she live?
A She lives in Orangeburg, South Carolina.
Q Okay. Who called her to come pick you guys up?
A Martin Dickerson. Because I told him that my feet was hurting so bad.
Q Okay.

A I couldn't walk that long.
Q From walking, your feet were hurting?
A Swell up. And I went to the hospital.
Q So he had his mom come from Orangeburg to pick you up. And she took you back to her house in Orangeburg?
A Yeah.
Q Okay. Well, how did you end up in Hickory, North Carolina, with Martin Dixon?
A He called a homeboy --
Q All right.
A -- his best friend.
Q Okay.
A When he called his best friend his homeboy up, that's how we got there.
Q And did he tell -- why did he say he needed to get to Hickory, North Carolina, with you?
A Because he said he had some mansion and he was going to get this house from this old lady. And he wanted to get this mansion house from this old lady.
Q All right.
Well, did -- I'm sorry. I didn't mean to interrupt.
A He said he had a house and a mansion up there with this old lady.

Q Did they end up being true?

A It wasn't true.

Q Okay. So instead of staying in the mansion, where did y'all end up staying?

A We stayed in the hotel.

Q Who paid for that hotel?

A I did.

Q Okay. Who told you to pay for the hotel?

A I asked him -- well, Martin told me, "Do you want me to pay for it?"

And I told him, "No, I'll pay for it."

Q Okay. And did he say anything about being worried about Antrone Dubose?

MS. ZMROCZEK: Your Honor, again, I'm going to object to leading.

THE COURT: Restate your question.

BY MR. SCOTT:

Q Did he say anything about being worried about Antrone Dubose being in the car?

A Nope.

Q Did he say anything about being worried about the police catching him?

A Nope.

MS. ZMROCZEK: Again, Your Honor, I'm going to object to leading. I think he can ask her what

he said or what he didn't say.

MR. SCOTT: It's a yes-or-no question.

THE COURT: I sustain the objection.

BY MR. SCOTT:

Q What, if anything, did he say about police -- and worrying about police finding him?

A He -- he told me that we was gonna go in jail. He said we're going to be eating jail food.

Q Okay.

A He said we going to be seeing your baby daddy in jail working in the jailhouse.

Q All right.

And do you remember when the police came and arrested you?

A Yeah.

Q And was in Hickory, North Carolina?

A Yeah.

Q All right.

And they brought you back to Columbia?

A Yeah.

Q Okay. Do you remember speaking with the police?

A Yeah.

Q Okay. Did they ask you what happened to Antrone Dubose?

A Yeah.
Q And did you tell them?
A Uh-huh.
Q And did you tell them the story you're telling me today?
A Yeah.
Q All right. All right.
So -- so who hit Antrone in the head with the crowbar thing?
A Martin Dickerson.
Q All right. And who is it that told him to get in the trunk?
A Martin Dickerson.
Q And did you help get him into the trunk of the car?
A He forced me to do that because of the fact that he threatened me and said he was going to kill me.
Q Who drove the car down to the graveyard?
A Martin Dickerson, because I don't even know how to drive.
Q You never had a driver's license, have you?
A Never had a permit.
Q Who tried to light the gas tank on fire?
A Martin Dickerson.
Q All right.

Did -- did he look -- who is this?

A That's Martin Dickerson.

Q He's changed his looks a little bit since the last time you saw him?

A Uh-huh.

Q But that's him?

A Uh-huh.

Q That's the guy who put --

A Yeah.

Q All right. Answer any questions Ms. Zmroczek has for you.

THE COURT: Ms. Zmroczek.

MS. ZMROCZEK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Good morning, Ms. Jones.

A Good morning.

Q I want to ask you probably a lot of questions, okay?

A Uh-huh.

Q So I wanted to start with where -- where you kind of left off.

Mr. Scott asked you if you told the police the same story that you're telling this jury here today. And what was your answer?

A It's the same thing.

Q Same thing, right?

A Yes.

Q And so you recall sitting with this man right here on October 24, 2019, at about 1500 hours, about 3 o'clock? Do you remember that?

A Yeah.

Q And is that who you talked to?

A Yes.

Q Okay. And you told him -- your testimony is that you told the police on that day that -- I'm just going to start from the beginning of your testimony, okay?

A Uh-huh.

Q And -- and -- and you tell me if you told the police that that day and that's the same testimony, okay?

A All right.

Q October 24, 2019, at around 3 p.m., you told Investigator Montgomery that you dropped out of school in ninth grade?

A Yes.

Q Okay. You told Investigator Montgomery on that same date, same time, that you stayed in a hotel in Columbia?

A Uh-huh.
Q Yes?
A Yes.
Q Okay. And what date are we talking about?
A I can't remember.
Q Okay. But you told Investigator Montgomery that you stayed in a hotel and that you paid for it?
A Yes.
Q Okay. And then you told Investigator Montgomery on that same date and same time that you were using ice -- tell me -- maybe I didn't hear that correctly. Tell me what you said about that.
A Well, basically Martin Dickerson asked me that, "You want to try ice?" I told him no. I didn't want ice. He said try it. You might like it. And I said okay.
Q You told all of that to Investigator Montgomery?
A Yes.
Q On October 24, 2019?
A Yes.
Q And then you -- you told him that you worked -- that you fixed the car and gave Mr. Dubose all of the money for the car, right?
A Yes, I did.

Q And when -- and you told him that you did that -- when did you tell him that you did that?
A I did it all in one day when we went to Columbia, all that.
Q Okay. So was the car fixed in Columbia or in Charleston?
A Charleston.
Q Okay. And what -- and how many days before you came up here was that?
A Two days.
Q Two days. And you told Investigator Montgomery that?
A Yes.
Q Okay. And then you told Investigator Montgomery that if you don't -- that -- that Mr. Dixon said if you don't -- told to Mr. Dubose, if you don't pay that girl behind the building or in an alley --
A Yeah.
Q That he needed to do that, right?
A Yeah.
Q And you also as you testified here today that you told Investigator Montgomery that Martin hit him, boxed them, and you watched?
A I watched it.
Q You watched it. And -- and you told him that

you did not kick him?

A No. I didn't kick him.

Q And then you told Investigator Montgomery that he, Mr. Dixon, hit Mr. Dubose with a black crowbar?

A Yes.

Q Okay. And you told Mr. Montgomery that when Mr. Dixon hit Mr. Dubose with a crowbar, Mr. Dixon then threatened you?

A Yes.

Q And you told Investigator Montgomery just like you told this jury --

A Yes.

Q -- that he, Mr. Dixon, said, "I'm going to kill you"?

A Yes.

Q And then you told Investigator Montgomery that he, Mr. Dixon, closed the trunk?

A Yes.

Q And you told Investigator Montgomery just like you told this jury today that he, Mr. Dixon, was pressing the brakes back and forth?

A Yes.

Q And that -- you told Investigator Montgomery that Mr. Dubose was yelling, "Help, help"?

A Yes. He was pressing the brakes back and forth, back and forth to keep his mouth shut so nobody would hear him. And that's what Martin Dickerson did.

Q Okay. And you told Investigator Montgomery that that was the first time you'd ever been to that cemetery?

A That's the first time I ever been there.

Q And that's what you told him just like you told this jury today --

A Yeah.

Q -- right?

A Yes.

Q And you told Investigator Montgomery that Mr. Dixon said he was going to bury Mr. Dubose?

A Yes.

Q Okay. You told him that on October 24?

A Yes.

Q Again, 2019?

A Yes.

Q Okay. And then you told Investigator Montgomery, like you told this jury today, that first Mr. Dixon wanted to crash the car and you told him that that's not right, that's not cool?

A Yes.

Q And then you also told Mr. -- Investigator

Montgomery on October 24, 2019, like you testified here today that Mr. Dubose killed Tony?

A Yes. Anthony Dubose.

Q Okay. And you also told Investigator Montgomery on October 24, 2019, around 3 p.m. that Martin wanted to light the car on fire?

A Yes.

Q And that Martin put the paper in the tank?

A In the car, yes.

Q In the car and in the tank?

A The tank.

Q Okay. And you told Investigator Montgomery, like you told this jury here today, that you didn't have anything to do with that?

A Nothing to do with it. Because Martin had all the ideas, all the ideas. He planned it.

Q He planned it?

A He planned it. Because he knew that Anthony Dubose wanted to get out of the gang.

Q Get out of the gang. You told all of that to Investigator Montgomery, right?

A Yeah.

Q And just like you testified to this jury today, right?

A Yeah.

Q And also on October 24, 2019, you told Investigator Montgomery that you were going to North Carolina because Mr. Dixon had a mansion?

A That's what he said.

Q Right.

A From an old lady.

Q From an old lady. And that's what you testified to today and that's what you told Investigator Montgomery on October 24, 2019, at 3 p.m., right?

A Yeah. He said he was going to take me up there.

Q Okay. Now, you also said that you paid for the motel in Hickory, North Carolina, right?

A Yes.

Q And you told that to this jury today and you told that to Investigator Montgomery on October 24, 2019?

A Yes.

Q And you also, as you testified today, that you told Investigator Montgomery that Mr. Dixon told you that you were going to be in jail with your baby daddy?

A Yes.

Q Okay. And --

A And he said we going to be eating jail food.
Q Eating jail food. And you told --
A He was making noodles and rice at his mama house and said we was going to eat jail food.
Q Okay. And that's the testimony that you're telling this jury is the truth today?
A Yes.
Q And that's the testimony that you told Mr. -- Investigator Montgomery on October 24 --
A Yes.
Q -- 2019?
A Yes.
Q Okay. I want ask you some questions about that testimony that -- but that is the true and accurate testimony, that's what you're testifying to today?
A That is the truth. That's the truth.
Q Okay. I want to go back to October 20 -- well, before I go there, let me ask you this: You remember what day of the week you came up to Columbia?
A No.
Q Okay. Do you remember how many days you were in Columbia?
A Not really.
Q Okay. How many days did you stay in the

hotel that you paid for?

A About two or three nights.

Q Two or three nights. Okay. What did --

A Or more. And then a whole month.

Q I'm sorry?

A A month in Hickory.

Q Okay. A month in Hickory. But I asked about Columbia.

A Columbia, only about two or three.

Q Okay. So two or three days, you're staying in the hotel. And that was right before this happened?

A Yeah.

Q Okay. And when did you go to the hospital in Columbia?

A This one -- Memorial, the one right up there by -- the hospital up here.

Q Is that where you went?

A Not the Memorial, but the first one at the corner.

Q The first one at the corner. Now, was that here in Columbia?

A Yeah, Columbia. It was in Columbia.

Q It was in Columbia. No doubt in your mind?

A No doubt in my mind.

Q And when was that?

A I can't remember the date. But I know he made me walked a long walk.

Q "He" who?

A Martin Dixon.

Q Martin Dixon made you walk to the hospital here in Columbia?

A He made me walk a long walk, like walk around the park. He said, "You got a few minutes to get to the hospital."

Q Did he ever take you to the Lexington Hospital?

A Yes, he took me to the Lexington Hospital.

Q When was that?

A That was -- I can't remember --

Q Okay.

A -- the date.

Q Let me ask it this way. You had a very clear memory of what happened with the car on August 6 and August 7, 2019, right?

A Yeah.

Q Okay. So -- so let's use that date as kind of our reference point. Okay?

A Uh-huh.

Q So if -- if -- if that's the date that all of this happened that Mr. Dixon hit Mr. Dubose with a

black crowbar --

A That's the same day that he got hitted with the crowbar.

Q Okay. And -- and when did you go to the hospital in relation to that date?

A That's the same day.

Q Went to the hospital the same day?

A In the morning.

Q In the morning.

Okay. Now, when did you and Mr. Dubose go to Walmart to buy a phone?

A I bought a phone at Walmart.

Q With Mr. Dubose?

A In Columbia.

Q With Mr. Dubose?

A Yes.

Q Okay. And when was that?

A That was -- ooh, I can't remember that date.

Q Okay. Was it --

A It's been a long time.

Q Right. Right. But it's kind of important.

A I bought both of -- both me and Martin a phone.

Q You bought two phones that day?

A Yes.

Q And was that before you went to the cemetery?
A That's before we went to the cemetery.
Q How many days before?
A That's like before we even did the crime --
Q Before --
A -- he did the crime.
Q Like how many days before you even did the crime?
A Before he even went to the left way.
Q I'm sorry?
A Before even Martin Dixon went to the left way.
Q Went to the where?
A The left way.
Q What's the "left way"?
A Bad.
Q I'm sorry?
A Bad.
Q I don't understand what you're saying?
A Being bad.
Q Oh, the left way. Being bad?
A Yes.
Q So was it a few days before?
A A couple of days.
Q Okay. So Ms. Jones, I want ask you a few

more questions about your charges. Okay?
A Uh-huh.
Q You're charged with attempted murder, right?
A Uh-huh.
Q And you understand that that carries a potential penalty of up to 30 years in prison?
A Uh-huh.
Q You have to say "yes" --
THE COURT: Use words.
THE WITNESS: Yes. Yes.
BY MS. ZMROCZEK:
Q And you're also charged with kidnapping, right?
A Yes.
Q You understand that kidnapping carries a potential sentence of up to 30 years?
A Yes.
Q And you're also -- you are also charged with arson --
A Yes.
Q -- third degree --
A Yes.
Q -- right? And that carries a potential penalty of up to 15 years, right?
A Yes.

Q So 30 plus 30 plus 15 is 75?
A Years.
Q Right. That you could go to prison, right?
A Yes.
Q But you don't want to go to prison, do you?
A No, I don't. Because if I go to prison, I'll get killed in prison.
Q You'll get killed in prison. You don't want to go, right?
A I'm -- I'm just going to let you know.
Q Please.
A I'm going to let you know.
Q Okay.
A Marly Mar is Illuminati.
Q Uh-huh.
A And he is Illuminati. You know what Illuminati means?
Q I do.
A Illuminati is a person that you make a sacrifice to a person.
Q Okay.
A Once you kill somebody, you have to sacrifice that person to order to be in the lead.
Q Okay.
A The music and everything in the Illuminati

and the music in the business industry.

Q Okay.

A So Martin was in the Illuminati. He was the first Illuminati.

Q The first one?

A Yes.

Q Oh, wow. Okay.

A He's the only one that could change the beats, the songs, everything, the lyrics, all that.

Q Okay.

A He's a rapper.

Q Okay.

A Martin made me as a rapper, too, to be in the Illuminati. But I didn't want to be in it.

Q Okay.

A So --

Q Okay.

A -- he showed me things that I couldn't be shown. One minute, he's nice; next minute, he's in a different world.

Q Okay.

A But Martin Dickerson, sometimes he be nice sometimes. But that night when he hit me, that night was being abusive to me --

Q What night was that?

A That night when I was in Hickory.
Q Okay.
A He told me that I woke him up because I took a shower. I took a shower. I took a shower. And I saw him kissing a white girl. So I didn't pay any attention. I let that go. He cheated on me. Because he kissed a white girl behind my back.
Q And that made you mad, right?
A Yeah, it did. It did. It did. I was upset. I was upset because I throw my whole entire heart on him. I thought he was going to be a faithful person.
Q Now, let me ask you this: You said that he was your boyfriend, right?
A Uh-huh.
Q And in fact, you told Investigator Montgomery on October 24, 2019, that he was your fiancé, right?
A Yeah. He was my boyfriend and he is my fiancé, but not no more.
Q Not no more. And then you said that -- that you found out that you were related?
A I found out we was cousins through his -- his -- his step daddy.
Q Okay. So I want to ask you some questions now, Ms. Jones, about -- I want to go back to October 24 when you were talking to Investigator Montgomery,

okay?

A Uh-huh.

Q So you remember him reading you your rights?

A Yes.

Q And you remember signing the paper?

A Yes.

Q And you signed it "XXX Browneye"?

A That's my stage name.

Q What -- what -- and -- and -- and -- what kind of stage name? What do you need a stage name for?

A That's my singing name that Martin gave me.

Q Martin gave you that as your singing name?

A Yeah.

Q Okay. Do you recall October 24, 2019, selling Investigator Montgomery that that was your stripper name?

A Yes. That's my stripper name.

Q Okay.

A Yeah, and I'm a stripper on stage.

Q And then you also signed it "Queen B"?

A Queen B is me.

Q That's you?

A Yeah.

Q Okay. And so you signed your name and then you signed XXX Browneye and then you signed Queen B?

A Yes. That's me.
Q So you have three names?
A Three names.
Q Okay.
And Ms. Jones, do you recall telling investigator -- well, first of all, before we get back there, you testified here today that -- that you never had a driver's license, right?
A Nope.
Q Never had a driver's license?
A Nope, never did.
(Defense Exhibit No. 4 is marked for identification.)
BY MS. ZMROCZEK:
Q Ms. Jones, I'm going to show you what's been marked for identification purposes at this point, Defense 4?
A Uh-huh.
Q And I just want you to look at it?
A Uh-huh.
Q Do you recognize that paper?
A Yeah.
Q Okay. What is that paper?
A That paper is my driver's license for -- three years' driver's license record.

Q Okay. And does that fairly and accurately represent your driver's license information?

A Yes.

MS. ZMROCZEK: Your Honor, at this time, we would move Defendant's 4 into evidence.

MR. SCOTT: No objection from the state, Your Honor.

THE COURT: It's admitted.

(Defense Exhibit No. 4 is admitted into the record.)

BY MS. ZMROCZEK:

Q So, Ms. Jones, and -- and -- and I'm just trying to make sure that -- that -- that these young people are able to -- to -- to take all of the facts and -- and be able to come up with a decision, right?

A Yes.

Q And you understand that you're under oath?

A Yeah.

Q And you have to tell the truth?

A Yeah.

Q That's why you swore on the Bible and rose your hand?

A Yeah.

Q So when you told Mr. Scott just a few minutes ago that you never had a driver's license, was that the

truth or was that not the truth?

A I had an ID.

Q Okay. Does this say ID or does this say driver's license?

A This says driver's license.

Q Okay. Do you sometimes get confused?

A That's weird.

Q Okay. So, Ms. Jones, and understand we're just trying to get to the truth, right?

A Yeah.

Q But what's really the most important thing to you is that you don't want to go to prison, right?

A No.

Q And so you didn't even want -- you didn't even want to testify, did you?

A No, I didn't want to testify, because the fact that I want him to go home.

Q You want what?

A I want Martin Dixon to go home and be free.

Q Let me ask you this, Ms. Jones: Why did you change your mind about testifying?

A Well, basically I change my mind because I have to tell the truth because God said I have to tell the truth, to let it out and let it known. And I have to let it -- let it be and let it sit as it is because

God said you have to tell the truth, nothing but the truth, and it will set you free.

Q Okay. And so when you didn't want to testify yesterday and then the Judge told you that --

MR. SCOTT: Your Honor, this question has been asked and answered. She is talking about what happened outside the presence of the jury.

THE COURT: I haven't heard the question.

BY MS. ZMROCZEK:

Q When you were told that you could get 60 years, did that change your mind about testifying?

A I didn't want to testify because the fact that he might kill me.

Q Okay. So, Ms. Jones, I want to go back to October 24, 2019, when you were sitting with Mr. Montgomery for your interview, right?

A Uh-huh.

Q Sorry. You have to say "yes" or "no"?

A Yes.

Q Okay. So you were brought into a room?

A Uh-huh.

Q And you were handcuffed to a table?

A Yes.

Q Okay. You remember that?

A Yes. I was handcuffed to a table.

Q And you remember there being a video camera in the room?
A Yes.
Q So you knew that it was being recorded?
A Yes.
Q Do you remember telling Investigator Montgomery on October 24 that -- do you remember asking if Marty was coming over or Molly was coming over?
A Yeah.
Q Okay. And who is "Molly"?
A Martin Dixon.
Q Okay. So you have a couple of different names for him?
A Marly Mar.
Q Okay.
A It's a rap name.
Q It's a -- it's a rap name?
A Uh-huh.
Q Okay. And so when Mr. --
A That Marly Mar One.
Q Marly Mar One?
A Yeah.
Q So when Mr. -- when Investigator Montgomery as to who your next of kin was, you remember telling him it was Martin?

A Yeah, Marly Mar, that's Martin.
Q As your next of kin, right?
A Martin II is my next of kin is Ray Sean Dickerson.
Q Okay.
A Ray Sean Cooper, I mean.
Q And then Investigator Montgomery asking you if there was somebody you could call. And you said Clorine Darby?
A Ms. Clorine Darby is my mother.
Q That's your mother?
A Well, godmother.
Q That's your godmother?
A Yes.
Q Okay. And what relation does she have to Mr. Dixon?
A That's her son.
Q Okay.
A Her mother -- his mother.
Q Okay. And do you remember telling Investigator Montgomery that you were a professional singer?
A Yes.
Q Okay. And do you remember telling Investigator Montgomery that you had a cell phone?

A Yes.

Q And you had a cell phone that -- the whole time that you were in the car and all of this was happening, right?

A Yes.

Q And you told him that Mr. Dixon had a cell phone?

A Yes.

Q And you told him that Mr. Dubose had a cell phone?

A Yes.

Q Okay. You remember telling Investigator Montgomery in 2019, on October 24, that you were related to a bunch of rappers in Charleston?

A Yes.

Q Okay. And then you remember telling Investigator Montgomery in 2019 that you graduated from Trident Tech?

A No. Not graduated. About to graduate at Trident Tech. I had three more years.

Q You had -- you told --

A About to go on my fourth year.

Q So you told Investigator Montgomery that you were about to go on your fourth year?

A Yeah.

Q Okay.
A At Trident Tech.
Q You sure you didn't tell him that you had already graduated?
A No, I didn't tell him I was about to graduate. I told him was going to finish up my third year, going on my fourth year.
Q Okay.
A But I couldn't finish my fourth year because I was with Martin Dixon. He told me not to --
Q And you told --
A -- finish school.
Q And it's your testimony today --
A He say -- he say that -- he say in order for you to be a producer or a music position, being -- making music, he said it's different ways how you make music and get your degree.
Q Okay. You remember telling Investigator Montgomery that you graduated high school and got your citizenship award?
A Yes. I got my citizenship award.
Q And that you had graduated high school?
A Yes.
Q Okay. You remember telling him that you passed the test to be in the military and the only

thing that you had to do was lose weight?

A Yes, I did.

Q Okay. You remember telling Investigator Montgomery on October 24, 2014, that Mr. Dixon -- Mr. Dixon --

A Uh-huh.

Q -- worked for the feds?

A Uh-huh.

Q I'm sorry?

A Uh-huh.

Q So you told him that?

A Yes.

Q Did Mr. Dixon work with the federal government?

A Yes.

Q How so?

A Because this is how I heard, I heard it about the grapevine. When I went to MUSC IOP in Charleston, IOP say Mr. Martin is a police officer.

Q Okay.

A They told me.

Q Okay. Do you remember telling Investigator Montgomery that Mr. Dixon worked for NASA?

A Not really. They didn't tell me that.

Q You don't remember telling Investigator

Montgomery that on October 24, 2019?

A Huh-uh.

Q Okay. Do you remember telling Investigator Montgomery on October 24, 2019, that Ms. Clorine Darby had a radio station?

A Yes, she do.

Q Okay. And do you remember telling Investigator Montgomery on October 24, 2019, that Mr. Dubose killed two people?

A Uh-huh.

Q Yes?

A Yes.

Q And do you remember telling Investigator Montgomery that Mr. Dubose killed those two people in Charleston?

A Yes, he did.

Q And you remember telling Investigator Montgomery that he killed those two people in Charleston by injecting them with drugs?

A Yes.

Q And you told Investigator Montgomery that he, Mr. Dubose, tried to kill you?

A Yes.

Q And in fact, you said he was trying to assassinate you?

A Yes.

Q Okay. You told Investigator Montgomery...

A Okay. Like, for example, they tried to assassinate me just like as you ever heard of Psycho Redemption [phonetic].

Q I have not.

A The officer?

Q I have not.

A Okay. Psycho Redemption officer, he works in Columbia up here. And he died a long time ago. And even though he died, but that's my boy cousin. But he tell me his story, his story about when he was in the gang and he died a long time ago for that. So if I tell y'all everything that's going on with Martin and if I tell y'all what's going on with Anthony Dubose, they are a part of that gang group.

Q And -- and you told Investigator Montgomery all of this in 2019?

A Yeah. And if you -- and if you tell it, you gone.

Q Okay. Do you remember telling Investigator Montgomery that you graduated from Trident Tech in 2018?

A Uh-huh.

Q Okay. Do you remember telling Investigator

Montgomery that -- that you go way back with Mr. Dubose?

A Back in the day in school.

Q Okay. And that he was your blood cousin?

A Yeah. He was my blood cousin.

Q And that he killed --

A Anthony -- Anthony killed that black girl, Tony Dickerson girlfriend. And Tony Dickinson was my boy cousin. And Tony Dickinson asked me to stay with him for a minute. And I stayed with him for a little minute and lay in his bed because I didn't have no place to sleep at. He say, "I'm a help" -- Tony Dickerson had told me that, "I'll help you find an apartment around this side." He was trying to help me to find an apartment.

Q Do you remember telling Investigator Montgomery that you paid all of this car stuff from Mr. Dubose in 2018?

A Say that again.

Q Okay. Do you remember telling Investigator Montgomery that you paid for all of Mr. Dubose's car stuff in 2018?

A Yes. I paid all of his car stuff in 2018.

Q Okay. And you recall telling Investigator Montgomery that -- in fact Investigator Montgomery

asked you what kind of car you paid to fix and what kind of car Mr. Dubose had, right?

A Uh-huh.

Q You -- you remember that?

A Uh-huh.

Q And you remember telling Investigator Montgomery that it was a gray car?

A I can't remember the car color right now because I can't remember way back this and that. So I can't remember what color it is. It could be gray. It could be black. It could be this and that. But you can't tell in the dark.

Q Right. But you remember telling Investigator Montgomery that it was gray and then he, Investigator Montgomery, corrected you and told you it was black? You remember that?

A Yes. Told me it was black.

Q And then you were like, "Oh, yeah. It's black"?

A It's black. Yeah.

Q Right. Because -- because that's what he told you?

A Yes. Because I didn't have my glasses at that time.

Q And then, you remember telling Investigator

Montgomery that it was a Honda -- a Honda LX 1500, right?

A Yes.

Q And Investigator Montgomery said, "No, it was a Lexus. He told you it was a Lexus, right?

A Yeah.

Q And then you said, "Oh, yeah. It was a Lexus"?

A And I said, "Yeah, it was a Lexus."

Q So every time Investigator Montgomery would correct you on a fact, you would just agree with him, right?

A Yeah.

Q Because you listened to the police, right?

A Uh-huh.

Q And you don't want to go to prison, right?

A Right.

Q So you want to make sure you tell them what they want to hear --

A Yes.

Q -- right?

A Yes.

Q That makes sense?

A Yeah.

Q And then, you remember him asking you about

coming up to Charleston and you remember telling him, Mr. -- Investigator Montgomery that Mr. Dubose was planning on assassinating you and Mr. Dixon?

A Yeah.

Q You remember telling him that?

A Yeah.

Q And you remember telling Investigator Montgomery that -- that Mr. Dixon's brother was also going to assassinate you and Mr. Dixon, right?

A Yeah.

Q You told him that, right?

A Yeah. I told him that.

Q Yeah. And then --

A I told him that.

Q And then do you remember telling him that -- when he -- so -- so then, he starts trying to ask you some questions again, right?

A Yeah.

Q And he is the one, he Mr.-- Mr. Montgomery, asked you if you stayed in a hotel in West Columbia, right?

A Uh-huh.

Q And you told him, "No, sir, we're not in a hotel"?

A Uh-huh.

Q Correct?
A Yeah.
Q So you told him you weren't in a hotel?
A Yeah.
Q Okay.
A Yeah.
Q Okay. But he said, "No, no. You were in a hotel. Mr. Dixon registered in a hotel." And he told you that?
A Yes.
Q And he told you that you did stay in a hotel?
A Yes.
Q And then he told you that Mr. Dixon paid for it, right?
A No. Mr. Dickerson didn't pay for it. I paid it out of my card.
Q You did?
A He put his ID on -- on the hotel.
Q Okay.
A But I've paid it out of my money.
Q Okay. But that's only after Investigator Montgomery told you that he had already gotten the receipt, but you didn't remember that on your own, did you?
A No.

Q You only remembered it when Investigator Montgomery told you about it?

A Yes.

Q Okay. And you remember Investigator Montgomery, you telling him -- so he asked you what happened, right?

A Uh-huh.

Q And you told him, you told Investigator Montgomery that -- that he was trying to assassinate you?

A Yes.

Q And then you told him that you were at the graveyard visiting a gravesite?

A Yep.

Q Okay. You told that to Investigator Montgomery. That -- that's why you were at the graveyard?

A Yep.

Q And then, you told Investigator Montgomery that you had -- you -- that we had to burn the car up. We did this in order to protect ourselves. That's what you told Investigator -- Investigator Montgomery, yes?

A Yes.

Q Okay. And then you said that Antrone was in the trunk and that --

A He had a gun.
Q Oh, and that -- oh, you told him that too?
A Anthony Dubose had a gun. He was planning to kill us.
Q Do you know this gentleman sitting right up here?
A Yeah.
Q Who is that?
A Anthony Dubose.
Q Anthony Dubose had a gun?
A Yeah.
Q And you told that to Investigator Montgomery?
A Uh-huh.
Q You told him that night?
A No. I didn't tell him that night. But he had a gun. He planned to kill both of us.
Q He was planning on it?
A He told us that.
Q He, not Mr. Dickerson, he Mr. Dubose was planning on killing you?
A He told both -- he told me and Martin that Anthony Dubose was going to kill us.
Q Okay. And then, you remember Investigator Montgomery telling you that there were pieces of paper burned up in the car, right?

A Uh-huh.
Q You didn't say that. He said that to you, right?
A No.
Q No -- no what?
A No, like for example --
Q Uh-huh.
A Like, for example, I told Martin. Martin had put a piece of paper inside the car. Basically, he did that. He'd light the car on fire and that was it.
Q Okay. And -- and your testimony is that's what you told Investigator Montgomery in 2019?
A Uh-huh.
Q And then you told Investigator Montgomery that it was Antrone who drove to the alley, right?
A Yeah.
Q Okay. And you told Investigator Montgomery that you lit the paper and you put it inside the car?
A Yeah.
Q I'm sorry?
A Yeah.
Q You told him that?
A Yeah.
Q Okay. You told Investigator Montgomery that -- that Mr. Dubose got out of the car?

A Yeah.
Q You told him that, right?
A Yeah.
Q Right behind you?
A Yeah.
Q And then you told Investigator Montgomery that he was still trying to assassinate you?
A Yes.
Q And that -- and that you had to leave town, right?
A Yes.
Q And you told Investigator Montgomery that T, who was your -- Mr. Dixon's friend came and picked you up in Columbia?
A Uh-huh.
Q Right?
A Uh-huh.
Q You have to say "yes" or "no"?
A Yes.
Q Okay.
A They was trying to kill me in the jailhouse too.
Q Okay.
A The girls.
Q Okay.

A Over Martin Dickerson.
Q I'm sorry?
A Over Martin Dickerson.
Q Okay. And then you told Investigator Montgomery in 2019, on October 24, that you didn't even want to go back to Charleston?
A Nope. I didn't.
Q Okay. And you told him that when you left Columbia that you went to Hickory?
A Yeah.
Q Okay. And that Mr. --
A I'd rather go to North Carolina, Hickory, than to be up there in North Charleston. It's worser in North Charleston than in Hickory. I'd rather be up there.
Q Okay. All right.
And then you told him that Mike told you that -- that Mr. Antrone got out of the car, right?
A That's right.
Q Okay. And Mr. -- Investigator Montgomery asked you if anyone had a knife. What'd you tell him?
A No.
Q No. No one had a knife. But your testimony today is that you told him Antrone had a gun and he was trying to assassinate you?

A Assassin us, yeah.

Q And --

A All because of Psycho Redemption money.

Q Right. And then do you remember -- so you were in this room handcuffed to a table for quite some time, right?

A Uh-huh.

Q And they talked to you for a little bit, asking you questions, right?

A Uh-huh.

Q Giving you information to refresh your memory, right?

A Yeah.

Q And then they were out in the hall and you were left in that room for quite some time?

A Yeah.

Q But the camera was still rolling?

A Yeah.

Q And you were having conversation with someone or were you just talking out loud. Do you remember?

A Bursting out loud. Telling them the truth about everything what Trump did, everything in the (inaudible), everything in government agencies.

Q Uh-huh.

A And that was the truth.

Q And you remember that you could hear them laughing out loud?

A Laughing at me, giggling at me, want to fight me. They want to take my panty, my underwears, my papers. All of that. They want to kill me. They want to do this to me. They want to stab me because of Martin Dickerson.

Q Who was doing that?

A Yes.

Q Who was laughing in the hallway?

A All the girls.

Q All of the girls?

A Girls in the jailhouse, (inaudible), all that, laughing at me, all this, this and that, taking my papers, even though I write my stories. I wrote my stories about my life. Y'all took my notebooks, all of that from me. Y'all did everything. COs opened the gate, took my notebook, my pads, everything I wrote a story about, about my life and everything. And that's a true story about my life.

MS. ZMROCZEK: Beg the Court's indulgence.

(Pause.)

BY MS. ZMROCZEK:

Q Just a few more questions, Ms. Jones.

A Uh-huh.

Q So you said you didn't remember telling Investigator Montgomery a few things that -- that I asked you. You didn't remember telling Investigator Montgomery that Martin Dixon worked for NASA?

A I didn't know that.

Q Okay. You didn't tell -- it's your testimony that you didn't tell him that?

A I think so. I did.

Q Now, you think you did?

A I think I did.

Q Okay.

A I think I did.

Q Okay. And -- and -- and it's your testimony that you remember telling Investigator Montgomery that -- that he had a gun?

A Yeah.

Q Would it refresh your recollection to watch that interview?

A Yeah.

MS. ZMROCZEK: Your Honor, at this time...

THE COURT: At this time, what?

MS. ZMROCZEK: At this time -- at this time, Your Honor, I'm marking her interview as a defense exhibit.

THE COURT: Okay.

MS. ZMROCZEK: And I would like to publish it to the jury.

THE COURT: All right.

Ladies and gentlemen, I'll have you go to the jury room. Please do not discuss the case.

(The jury exits the courtroom at 2:48 p.m.)

THE COURT: You asked her whether watching this interview would refresh her recollection?

MS. ZMROCZEK: Correct.

THE COURT: All right.

Ma'am, you may step down. You may do that outside the presence of the jury.

THE WITNESS: Thank you.

THE COURT: We will take up some other matters while she is watching that. How long -- how long is it?

MS. ZMROCZEK: Your Honor, it's an hour and 45 minutes.

THE COURT: We'll have to take an hour and 45 minutes if it takes that long. You want her to watch the hour and 45 minutes or you have something specific in mind?

MS. ZMROCZEK: Your Honor, I don't believe -- well, she said that she testified -- or she told Investigator Montgomery that Mr. Dubose had a gun.

THE COURT: I heard what she testified to. I said: Do you want her to watch the hundred and -- the hour and 45 minutes or do you have something specific you want her to refer to to refresh her recollection?

MS. ZMROCZEK: So Your Honor, that's not on there. So I think in order for her to properly answer that question, she has to watch it because it's not said anywhere on there.

THE COURT: So what's -- what's not on there?

MS. ZMROCZEK: The fact that she told Investigator Montgomery that Mr. Dubose had a gun and was going to kill them that night.

THE COURT: All right.

Okay. Well, Mr. Scott, any comment by you?

MR. SCOTT: I still can't figure out what she's trying to accomplish. Does the Court understand?

THE COURT: No, I -- I have no clue. I mean, you basically asked her --

You've gone through the entire interview, it seems like. You've repeated almost everything verbatim and had her "yes" and "no," did she say that, did he say that and all that. Now you want her to watch an hour and 45 minutes of the same

thing you've been talking to her about to find out whether or not it refreshes her recollection concerning something, concerning whether or not Dixon had a gun. And then your client -- who had a gun?

MS. ZMROCZEK: No, Mr. Dubose had a gun.

THE COURT: Dubose had a gun.

MS. ZMROCZEK: And Your Honor --

THE COURT: So how does that help you? If you have the victim with a gun, you want her to admit that she didn't really say that?

MS. ZMROCZEK: Your Honor, if -- if -- if I may have a few minutes, this may be a good time for a break, and I can think through and see if that's good use of the Court's time.

THE COURT: I'm fine. We have two other sets of people here that we're getting ready to talk to.

MS. ZMROCZEK: Okay.

THE COURT: So time is not a problem with me. And it appears this might be our only trial. I'm fine. You can take as much time as you need.

MS. ZMROCZEK: Okay.

THE COURT: I just want to be clear why you -- what you're trying to do.

MS. ZMROCZEK: So Your Honor, let me just -- if I may strategize for a few minutes.

THE COURT: Sure.

MS. ZMROCZEK: We can take a break and then I can --

THE COURT: Just let me know. You know, I can even send the jury to lunch. And we can do something else too.

MS. ZMROCZEK: Okay.

THE COURT: Okay. So we're in recess in this case.

Just let me know how long so I can decide whether I'm going to let the jury go.

(A recess is taken.)

THE COURT: Give me a clue as to what is the best step with this lady.

MS. ZMROCZEK: I think that I can just procedurally discuss without having him here, Your Honor. Just procedurally, Your Honor, I've had time to reflect on the testimony.

Your Honor, I will not be trying to refresh her recollection or impeaching her. Your Honor, I would, though, when my client gets up here just renew my objection to her competency. And I will put that on the record.

THE COURT: All right.

So where is she?

MR. SCOTT: She is outside Your Honor.

THE COURT: We will need her on the witness stand.

MR. SCOTT: I can go get her.

THE COURT: So we are through with the jury panel? No. The jury panel downstairs.

THE CLERK: You want her back on the witness stand?

THE COURT: Yes.

So hopefully make sure they are bringing the guy.

THE BAILIFF: Yes. I will make sure.

THE COURT: All right.

(Pause in proceeding.)

THE COURT: All right.

Ms. Zmroczek.

MS. ZMROCZEK: Thank you, Your Honor.

As an experienced trial lawyer itself, you know, sometimes you have to think through things at the moment. Your Honor, I have done that. I have left the exhibit marked as an ID. I will not pursue that line anymore.

Your Honor, but at this time, before the jury

comes back, I would renew my objection to this witness's competency under *State v. Needs*, 508 S.E. 2d 857.

Your Honor, the -- as you heard the testimony and cross-examination regarding her ability to perceive the events and with a substantial degree of memory as she testified numerous times that it was so long ago she can't remember, and with a reasonable degree of competency, and I think that Your Honor now that you've heard the testimony understood my concerns. And I would, at this time, Your Honor, ask that she be found not competent and her testimony be stricken.

THE COURT: All right.

She is competent to testify. It's for the jury to weigh her testimony, given all of her issues and her ability to recall the testimony truthfully. I do not believe it's the -- her past mental issues affects her ability to testify.

She's on medication. She has things under control. She's very articulate. I was impressed by her ability to express herself. She got into some things about the Illuminati and whatever that is, which is kind of beyond me. But she said that guy was trying to get out of a gang and I guess

she was trying to get out of it too, whatever that meant. So the jury can evaluate the meaning of all of those things. I do not find it affects her competency to testify.

MS. ZMROCZEK: And I'll have no further questions, but I can --

THE COURT: All right.

MS. ZMROCZEK: -- wait until the jury comes back.

THE COURT: We'll do that in front of the jury. After that happens, then what? You have redirect?

MR. SCOTT: Briefly, I do.

THE COURT: Let's bring the jury.

(The jury enters the courtroom at 1:13 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Thank you, Ms. Zmroczek.

MS. ZMROCZEK: Thank you.

I have no further questions at this time.

THE COURT: No further questions by the defense.

Redirect?

REDIRECT EXAMINATION

BY MR. SCOTT:

Q Michelle?

A Uh-huh.

Q You were talking about some people when you were in the jail and there were some women laughing at you and making fun of you?

A Yes.

Q Has that happened a lot in your life?

A Yes. Every since I was a kid.

Q And people tried to take advantage of you?

A Yes.

Q And people used you?

A Yes.

Q And --

A Taking granted for my heart and I was being nice.

Q Okay.

A And they fight me and they beat me and everything, all the mens and the girls and the guys. I had to fight my way.

Q You been beat by a lot of men?

A Yea.

THE COURT: Talk into the mic.

THE WITNESS: I was getting beat in all -- every last of the guys was dating me.

BY MR. SCOTT:

Q Let me ask you: Have you been taken

advantage of because of your mental disabilities?

A Yes.

Q Because --

A Because I have mental 'tardation.

Q And have people used you because you get a check in the mail?

A Yeah.

Q And have people tried to get you to give them some of that money?

A Yeah.

Q And has Martin Dixon used you from time to time?

A Yes, he did. Because he kept his money back.

Q Did he take money from you?

A No. He didn't take money from me. But I asked him if he needed anything else or needed anything you need. I helped him out what I could help him.

Q Okay.

A But I couldn't do no more because the fact that he didn't help me out back. That's the fact.

Q You were having to help him a lot?

A Yeah. He didn't help me back.

Q Okay. You said you threw your whole heart on him?

A I throw my whole entire heart on him. I had

loved him. I had care about him. I had did a whole lot. I even overdosed myself because I love him. He said he was going to break up with me because of the fact that I was been with this dude. He wanted me to have sex with this dude and I didn't want to have sex with that dude.

Q Was he going to film it or something?

A Yes.

Q And he is the one who had all of the ideas?

A He was all the one that had all the ideas.

Q Okay.

A And I just wanted to be with one man, only just Martin Dixon.

Q All right.

Just a couple more questions. You -- you talked earlier about having to speak with Wayne Montgomery --

A Uh-huh.

Q -- when they bought you back from Hickory. And you told him about how Antrone -- or Anthony Dubose ended up in the trunk, didn't you?

A Yeah.

Q How did you know how Anthony Dubose ended up in the trunk?

A How did I know? Martin Dixon told me.

Q Did you see it happen?
A Yeah. I saw it everything, details and everything.
Q How did you know how Anthony or Antrone Dubose got to the cemetery?
A Because I saw everything.
Q Okay. How did you know -- let me see if I got a picture. You recognize what that is?
A I can't see that.
Q How did you know to tell Wayne Montgomery about a rag in a gas tank?
A Well, that's true.
Q How did you know how to tell him about that?
A Because basically I told the whole story and the whole truth about what happened.
Q My point is: How would you have known to tell him if you hadn't seen it?
A I sawed it.
Q Okay. And you told him about how it happened?
A Yeah.
Q This is State's -- I mean, not State, Defense No. 4 that they showed this to you.
A Uh-huh.
Q Remember the lady called it a driver's

license?

A Yeah.

Q What do you have? Is it an ID?

A Yeah, ID.

Q Okay. This is an ID. Do you have it with you?

A My auntie has it.

MR. SCOTT: Do you have it with you, auntie?

MS. RIVERS: Yes, it's in the vehicle.

BY MR. SCOTT:

Q Oh, okay. But it is an ID. You've never driven a car in your life?

A I never drove a car in my life.

Q That's what the government gives you so that you can show you are?

A Yeah.

Q And doesn't have any driving information. It doesn't list a class?

A Huh-uh.

Q It doesn't list any kind of qualifications --

A No.

Q -- like a normal license?

A No.

Q This is just an ID?

A Just a ID.

Q Okay. So when the defense attorney was saying you have a driver's license, that's not true?

A That's not true.

Q That's what you were issued for your ID?

A Charleston -- Charleston gave me ID, a specially ID saying no license. That's what they gave me.

Q Okay. All right.

Who was there when Anthony Dubose was put in the trunk of his own car?

A Who was there?

Q Who was there?

A I was there and Martin was there. It's three of us.

Q Okay. Who was there when Antrone got hit in the head with a tire iron, or the crowbar?

A Martin Dixon and I was there. Three of us. And I watched it.

Q All right.

A I just stood there and watched, but watched.

Q Who was in the graveyard when Antrone Dubose car was set on fire with him in the trunk?

A It was me and Martin, but I had watched it.

Q Okay. And who was it who went up to Hickory, North Carolina, with Martin Dixon after this?

A It was me and Martin. And I watched it.

Q All right.

Thank you very much.

MS. ZMROCZEK: Very briefly, Your Honor.

THE COURT: Yes.

RECROSS-EXAMINATION

BY MS. ZMROCZEK:

Q You -- you told Mr. Scott that -- that Mr. Dixon helped you and you helped him, right?

A Nope.

Q You didn't just say that just now?

A I didn't help him.

Q Oh. You didn't help him?

A Huh-uh.

Q He wasn't taken advantage of you, was he?

A He was taken advantage of me.

Q Okay. How much was your check?

A My check was 735, I think, or 45. I can't remember.

Q Do you still get that check?

A No. Because basically we're trying to get it back.

Q Oh, so you don't even get a check anymore?

A I have a check. I'm trying. I'm getting a lawyer.

Q Okay.
A I'm trying hard to get it back.
Q Okay.
A Hard as -- beg as hard. I got no money, no resource, no nothing, no anything, no Medicaid, no nothing.
Q Okay. And you --
A All because of Martin Dickerson.
Q All because of Martin Dickerson.
Mr. Scott asked you how you knew about the rag in the car, right?
A Yeah.
Q And how you knew about it was because Investigator Montgomery asked you about it and then you told him yeah, right?
A Uh-huh.
Q So he asked you first and you told him yeah?
A Uh-huh.
Q Right? That's how it went?
A Uh-huh.
Q Is that "yes"?
A Yes.
Q So that's how you knew about it?
A Yeah. But I watched it.
Q And you watched it. And you watch that black

crowbar, right?

A Yeah.

Q Thank you, Ms. Jones.

A Hit Martin -- Martin hit him.

Q Thank you, Ms. Jones.

THE COURT: All right.

Madam, you may step down.

THE BAILIFF: Step down. Watch your step.

THE COURT: Call your next witness.

MR. SCOTT: The state recalls Wayne Montgomery.

THE COURT: All right.

We'll do that after lunch.

MR. SCOTT: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, we'll come back at -- how much time y'all for lunch?

THE JUROR: An hour and a half.

THE COURT: Hour and a half. All right.

Y'all come back in an hour and a half. Please do not discuss the case. An hour and a half from now would be 2:54, something like that.

(The jury exits the courtroom at 1:22 p.m.)

THE COURT: All right.

How many more witnesses do you have now?

MR. SCOTT: Just recall Wayne just to clear

up the fact that he didn't tell her what to say. That was in assertation by the defendant.

THE COURT: All right.

MS. ZMROCZEK: And, Your Honor, in doing so, obviously, I'm going to cross-examine with the specific -- the specific numbers of that video. So if while we have an hour and a half lunch break to save the Court some time, if he would like to rewatch that video or, you know, if I need to be able to play it for him to -- to be able to clarify. Because you know, they're going to get up there and say, oh, that ain't true. Well, fine, we'll just watch the video.

So that's -- you know, just how long it's going to take, Your Honor. If they're going to get up there and say that I'm lying, then I'm certainly going to have two impeach the witness.

THE COURT: Say that you're lying?

MS. ZMROCZEK: That's what he just said: She told the jury that he told her what to say. And so, you know, that's a personal attack on me, Your Honor.

MR. SCOTT: I don't see it as such.

MS. ZMROCZEK: The evidence is what it is.

THE COURT: Well, if it's a personal attack,

how (inaudible).

MS. ZMROCZEK: Well, if he gets up there and say, "I didn't say -- I didn't tell her about the rag, she told me about it," well, it's on video. We know who told who first. I believe that's going to be the substance of his testimony, Your Honor. I will go ahead and pull that specific section up now just so we're prepared.

THE COURT: All right.

Whichever way it goes. I'm here --

MS. ZMROCZEK: Thank you.

THE COURT: -- to rule this way or that way.

MS. ZMROCZEK: Thank you, Your Honor.

THE COURT: Okay. We'll be back.

(A recess is taken.)

THE COURT: Bring the jury.

(The jury enters the courtroom at 3:05 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Very good.

Your next witness.

MR. SCOTT: Your Honor, the state recalls briefly Sergeant Wayne Montgomery.

THE COURT: You're still under oath.

WAYNE MONTGOMERY

having previously been duly sworn, testifies as

follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q Sergeant Montgomery, after she was arrested with Martin Dixon in Hickory, North Carolina, and they were bought back to Columbia, did you have an opportunity to interview Ms. Jones?

A Yes, sir. I did.

Q Okay. And that was -- you had already interviewed the victim, Antrone Dubose, right?

A That's correct.

Q So you had his version of the story, and now you were looking to see what she had to say about it?

A Yes, sir.

Q Is that fair?

A Yes, sir.

Q And is it safe to say you were looking for corroborating pieces of information?

A Yes. In speaking to the co-defendant in this case, just trying to gather information that was consistent with what the victim might have told us -- told me during the beginning stages of the investigation.

Q So she just testified. You've been in here the whole time. Very clear mental health issues. She

said she's been treated since she was a little girl for the most part. A bit of word salad going on, would you agree? In other words, she -- she gets off on different tangents and talks about things that may be delusional. Is that fair to say?

A Yes. Very fair to say.

Q Okay.

A Very fair.

Q Defense attorney mentioned she said the defendant worked for NASA. Is there any evidence he ever worked for NASA?

A Not to my -- no information I got that he ever worked for NASA.

Q Okay. And you have information of him being a part of the Illuminati?

A Other than the statements that was made by the witness, I have no information of such.

Q And any -- there's a lot of talk about assassinations. Is that fair to say?

A Yes.

Q Okay. Did this seem to be product of delusion to you?

A To me, it appeared to be that, yes.

Q Okay. Have you interviewed people with mental health issues in the past?

A Yes. And it's customary in my lot of work is you can be in contact with people of various social economic statuses, various mental health issues. You can deal with someone with a third-grade education in one hour and two hours later someone with a master's degree. So definitely a diverse population of people in all walks of life that we deal with in law enforcement.

Q You interviewing her, were you trying to trick her in anyway?

A No. Not at all.

Q Were you trying to put words in her mouth? Was that your intent ever?

A Never.

Q There was an instance where you asked her what color car Antrone Dubose has. Do you remember that exchange?

A Yes.

Q And her answer is?

A She indicated that she believed it was gray, that the vehicle was gray.

Q Did you challenge her in any way? Did you try to put words in her mouth? What was your response to that?

A I believe during that exchange, I indicated

that -- not exact on the words, but could the car had been black or was it black, just to get the clear color of the car.

Q Okay. And did she agree that in fact she did remember it to be black?

A She ultimately stated it was a black car.

Q And was that you attempting to put words in her mouth or trick her in any way?

A No.

Q There was a time I think you asked her the make of the car. What did she say?

A She believed it was a Honda or Honda-ish type of vehicle. And then I believe I asked her was it a Lexis or could it have been a Lexus.

Q Okay. And on the heels of that, what did you mention to her as far as putting words in people's mouths?

A During the interview, when she agreed that it was a Lexus, I actually then reaffirmed with her or just wanted to confirm with her or I stated to her, "I don't want you just to agree with me because I said it." So I wanted to make sure that she understood that, one, if she had her own answers, that is what I wanted from her. But I also didn't want her to just go along with whatever I was saying.

Q Okay. And now were you looking for things that she would have knowledge of that you wouldn't necessarily have knowledge of unless you were at the scene of this particular crime?

A Yes. And she mentioned some -- some intimate details of what occurred that either was not provided to her, published in any other form. So she was able to put some of those intimate details out during her interview.

Q And we just went back and kind of during the break we rewatched a lot of that interview, did we not?

A That's correct.

Q And this is State's No. 34. Do you recognize that?

A Yes. That is a copy of the interview, I believe the entire interview that we had that particular day.

Q And that fairly and accurately represents the interview you had with Mr. Jones?

A That's correct. It's about an hour and 46/47 minutes possibly long.

Q If you attempted to influence her in any way or tried to put words in her mouth, it would be on this video?

A That's correct. It would be on that video.

MR. SCOTT: The state offers State's 34 for admission into evidence.

MS. ZMROCZEK: Without objection.

THE COURT: It's admitted.

(State Exhibit No. 34 is admitted into the record.)

BY MR. SCOTT:

Q Tell me some of the things that she talks about in that video that she would have had no real way of knowing unless it was just a giant coincidence or where she guessed one in the million?

A One of the first things she mentions is the repair for the vehicle. She indicates she spends a couple of hundreds of dollars to fix the vehicle. And she gives in particular what types of tires and things that she fixed on the vehicle to get it ready to come to Charleston.

Q And that was compelling to you because Antrone Dubose already said this was over money owed because she had done repairs to his car?

A That's correct.

Q And you did mention to him anything -- her anything about repairs to a car or anything like that?

A No. She mentioned that first during the interview.

Q Okay. So either that was just a one-in-a-million guess or she had some personal knowledge of those repairs done to his car?

A That's correct.

Q All right.

What else? Did you ever mention that Martin Dixon was -- was implicated in this crime as well?

A Only after she initially introduced Mr. Dixon at -- by name.

Q Okay. So she was the first to mention Martin Dixon being involved?

A That's correct.

Q What else?

A She indicated that the victim was attempting to call his brother --

Q Okay.

A -- multiple times.

Q That was compelling to you why? Because you had already spoken with Antrone Dubose about him trying to call his brother?

A Yes. He indicated that during -- during this process, he spoke with his brother.

Q How would she possibly have known about that?

MS. ZMROCZEK: Objection, Your Honor; speculation.

THE COURT: Sustained as to the form of the question.

BY MR. SCOTT:

Q Okay. So she said she had knowledge that the victim had been trying to call his brother?

A Yes.

Q And you already spoken with Antrone Dubose about that?

A Yes. He mentioned that.

Q Of course, you were in here when Antrone testified and his brother ultimately testified as well?

A That's correct.

Q Okay. What else did she talk about that really dovetailed with Antrone Dubose's version of events when you interviewed him at the hospital?

A She indicated that it happened, the kidnapping happened in the alleyway which was consistent with what Mr. Dubose stated, that the incident happened behind what he stated was an abandoned building.

Q Okay. What else did she say? Did you ever tell her -- did anyone ever tell her that this attempted murder happened in the graveyard?

A No.

Q Okay. Did she offer that herself?

A She indicated where the incident took place as far as attempting to burn the vehicle.

Q Okay. And so if anybody ever made an insinuation that you tried to trick her or put words in her mouth, is that true or untrue?

A It would be untrue. And they would be able to observe that on the video.

Q And I'm not going to play the video. It's about -- about an hour and 45 minutes; is that -- is that right?

A Just about right.

Q The jury can watch it?

A Yes, sir.

Q Is it safe to say that at least the talking parts pretty much end about 47 minutes in?

A Yes. The interview ended much shorter. But the whole tape is longer.

Q It continues to record. But there's no real speaking parts after 47 minutes?

A That's correct.

Q The jury can -- when they deliberate, they can watch that?

A Of course, if they wish.

Q So you are saying that you point out to them about the repairs done to the car and owing her money,

about Martin Dixon being involved, about the victim trying to call his brother. You thought it was compelling about she talks about the kidnapping happening in an alleyway. Antrone said it was behind an abandoned building. But you found that relatively consistent.

And then the graveyard, she mentioned that it happened in a graveyard?

A Yes.

Q And nobody ever would have told her that. If you watch that interview, you don't mention it until she brings it up?

A That's correct.

Q Okay. Thank you very much.

Well, briefly, one second, if I may.

All right.

That's all. Thank you.

THE COURT: Ms. Zmroczek.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Hi --

A Hello.

Q -- again.

A Yes, ma'am.

Q You, Investigator Montgomery -- Sergeant

Montgomery, said that you've dealt with and interviewed and questioned people with mental or emotional problems, right?

A Yes, ma'am. I have.

Q And you knew that they could be very -- that -- that -- that they could be open to suggestion, right?

A Yes.

Q And that some of the things that she was saying were a product of delusion, right?

A Yeah, it appeared to be, yes, ma'am.

Q You made that determination on your own?

A From listening to her, it appeared to be, yes, ma'am.

Q Okay. So you don't have a degree in psychology?

A No, ma'am.

Q Okay. So you are just assuming when she says that he -- he, Mr. Dubose, is going around killing all of her boy cousins and girl cousins, that that's just delusion, right?

A No, I'm listening to what she's saying. But it could be.

Q It could be. Or it could be true, right?

A There is a possibility.

Q Okay. A real possibility that some of the things that she is saying is true. But all you are focused on is trying to corroborate what Mr. Dubose has already said, right?

A No. She's providing information that only the person or people who was present at that time would know. So not necessarily just trying to pick and choose what I'm listening to, but this is the information she's providing.

Q Okay. And we're going to -- I'm going to publish -- I'm going to publish State's 34 in just a few minutes. But I don't want to stop and start it. I'm going to ask you the questions and then we will watch it. Is that fair?

A Yes.

Q Okay. So you would agree that -- that you read the full warrant to her that -- that -- that has the facts in it that you put in for the arrest warrant, right?

A I did not read her the warrant. I believe, if I'm not mistaken, Officer Grant who was on the fugitive task force team actually read her the warrant.

Q Okay. All right.

And then you would agree with me that you introduced the information about her -- about things

being lit on fire?

A Yes.

Q Okay?

A Yes, ma'am. I did.

Q She did not independently ever say anything about that until you asked her about that, correct?

A I mentioned about things that, I believe, in the vehicle or the gas tank. I believe I mentioned both of those.

Q Or both, right?

A Yes, ma'am, or something.

Q And then -- and then when you would correct her or question her further, she would agree with you, right?

A Not necessarily. It depends on what we were discussing.

Q Okay. So instead of wasting our time, we'll just watch the video, okay?

A Yes, ma'am.

Q Thank you.

A Thank you.

MS. ZMROCZEK: I'm about as graceful as I can be with this.

THE COURT: Ms. Zmroczek, do you have specific questions or are you going to --

MS. ZMROCZEK: Your Honor, at this time, I would move to publish State's 34 that's already in evidence.

THE COURT: On what basis?

MS. ZMROCZEK: On the basis that it's in evidence and I would like to publish it.

THE COURT: Well, the jury will have it in the jury room.

MS. ZMROCZEK: Certainly, they will.

THE COURT: It's an hour and 45 minutes. So do you have any particular portion of it that you would like to question this witness concerning?

MS. ZMROCZEK: Well, and that's what I was doing. Yes, Your Honor. I understand that the jury will have it in there. But certainly it -- it's in evidence. I'm not going to play the hour and 45 minutes.

THE COURT: Well, that's my question. Do you have a particular portion that you want to focus on?

MS. ZMROCZEK: I do.

THE COURT: Okay.

MS. ZMROCZEK: Beginning at -- at minute 13 --

THE COURT: Okay. You can go ahead and begin

at whatever minute you said.

BY MS. ZMROCZEK:

Q And now, there are two interviews, right, that on this disc, right? But there are two cameras that are in the room?

A Yes, ma'am. One interview with two camera views.

Q Right. Right. So it's the same interview, it's just two different views?

A That's correct. Yes, ma'am.

(State Exhibit No. 34 is played.)

THE CLERK: Judge, the jury can't hear.

MS. ZMROCZEK: Sorry. I was trying to turn it up.

THE CLERK: They said they couldn't hear.

MS. ZMROCZEK: With the volume up, is that better?

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q Okay. You said that's the fugitive task officer?

A Yes, ma'am. That is master police officer, I believe he is now an investigator, John Grant who was reading the actual warrant to her.

Q Okay. And the jury will have this back and

they can watch the whole thing. So I'm going to skip ahead a little bit to minute 22 to a little bit about 28 where -- where you were questioned about the car and she was trying to tell you what color and what type and then you were -- you corrected her or we can just watch the exchange, right?

A Yes, ma'am.

Q Okay.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q Okay. Just so is this you?

A Yes. Yes, ma'am, that it's me.

Q Okay. And so you would ask her questions and then you would, as we heard, either make noises and then -- and then maybe give her another option, right?

A In that particular exchange, which is not -- it -- it's, I would say, about halfway through.

Q Right, right. I'm going to keep playing it.

A Okay.

Q Yeah, yeah.

A I asked her what, obviously what kind -- color the car is. She gives an answer.

Q Okay.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q Now, that, you mentioned on direct, was something that matched up with what Antrone said, right?

A When you say "that," what -- what are you -- I'm not sure what you're talking --

Q She just said, "I paid for the car. I paid to fix the car"?

A Yes, ma'am. There --

Q Okay.

A -- there was information previously from the victim that she paid to fix the car.

Q Right.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q So when you said it was 2018, then -- but then you said it was 2019, she never independently told you where -- or when -- a time period of when the car was fixed, right?

A No, ma'am. We weren't talking about the vehicle at that time. I was clarifying what she was attempting to say was the assassination.

Q Okay.

A But ultimately, I believe I stated something about August. And that's when I'm talking about 2019 when the incident occurred.

Q Okay.
A Yes, ma'am.
Q And she never -- she never told you a date that it occurred, right?
A That what occurred, ma'am?
Q That -- the incident that we're here for.
A I don't believe she states a specific date at this particular time.
Q Okay.
A But she does give the details -- or begins the details of the incident.
Q Okay. And -- and so -- yeah. And those are coming right up, right?
A At some point.
Q Okay. Well, I think it's at 32, so we will...
(State Exhibit No. 34 is played.)
BY MS. ZMROCZEK:
Q So she corroborated that he was calling his brother, but she told you that he was calling his brother to claim an assassination, right?
A You could attempt to interpret it as that. I think she was -- may have been blending some incidents together. Quite possible.
(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q Okay. So even though she provided some information, other information that you had documentation for, State's 41 -- I think that says -- is it -- that says 41? My eyes are going terrible.

A Mine too. Yes, ma'am.

Q So State's 41. So you knew that Martin Dixon had paid for a hotel in West Columbia, right?

A He registered for that hotel in West Columbia, yes, ma'am.

Q Okay. And in fact, I think a few days ago -- my days are running together at this point -- you testified that he paid cash for this?

A The receipt indicates that it's paid for cash.

Q Okay.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q Now, you would agree with me that the warrant that was read to her indicated that -- that Mr. Dubose was in the trunk, right?

A Yes, ma'am. I believe --

Q Okay.

A It's not in front of me. But I think the -- I wrote it and I believe the verbiage does say. Yes,

ma'am.

Q Right, right.

A Yes, ma'am.

Q And -- and we're not going to go back and play that. They can do that later. But it's all recorded on here, right?

A Yes, ma'am.

Q Okay. And then -- and then you introduced -- or you asked about the tire iron, right?

A I -- I believe I asked who hit him with the crowbar or something of that nature.

Q Right.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q So again, she can't remember what time it was, right? But then you suggest, Was it was nighttime? And she agrees with you, right?

A At that moment, yes. We're trying to narrow down the actual timeframe or -- so that we could see if there was some video evidence or something in the area.

Q But those were details that she couldn't give you. But when she said, "I can't remember what time it is." But then, you say, "Well, was it nighttime?" And then, boom, she agrees, right? Yeah, it was nighttime.

A Yes.

Q Okay. I think y'all go on to talk about her phone. I'm going to speed it up a little bit.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q You would agree that there were clearly internal inconsistencies within the -- the minute and half that we just watched, right?

A It indicates that, yes, ma'am.

Q Okay.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q So you are trying to -- you're -- you're trying -- are you trying to -- to put a timeline together or are you trying to match up things that you already know?

A I'm trying to develop a timeline of events.

Q Okay.

A And -- and -- and a lot of this exchange -- let me start to this. As you alluded, I'm not a psychologist or a therapist. I've been trained to deal with people with mental health through training. However, this would require, at some point, some serious detailed or high level degree. So I'm attempting to gather the information to develop a timeline. And it's a little difficult to keep her on

task as we have seen.

Q Yes.

A Yes, ma'am.

(State Exhibit No. 34 is played.)

BY MS. ZMROCZEK:

Q Shortly thereafter, the interview, you -- you leave the room, right?

A Yes, ma'am. We conclude shortly after that.

Q Okay. And you -- you left the room for almost an hour. She's in there by herself, right?

A That's correct.

Q But it's still recording, right?

A Yes, ma'am.

Q And so anything that she says or any persons, real or imaginary, that she's talking to, it's all recorded on -- on your video, right?

A Yes, ma'am. Anything she says is captured in that.

Q Okay. Thank you. I just have a few more questions for you.

So in your years of investigation, you've had people -- you've had people try to minimize their behavior or explain their behavior, right?

A Yes, ma'am.

Q Okay. That -- that's something common?

A Yes.
Q Right?
A Or omit information.
Q And -- and you've had people either be confused or just outright not tell the truth, right?
A Yes.
Q And so we've got multiple stories at this point. You have what Mr. Dubose told you about the four or four-and-a-half finger man, Mr. Dixon. And then you've got things that Ms. Jones told you. And you're trying to add them all up to see which makes matches, what makes sense, right?
A Yes, ma'am.
Q Okay. One thing that would help is had we had those phone records, we wouldn't have to rely on this kind of information, right? Or it would assist in corroborating or -- or proving that that evidence wasn't true, right?
A I don't believe in this case that would have done that.
Q Right, right. Didn't do that in this case?
A No. As clearly indicated previously, I did not do that in this case.
Q Okay.
A Yes, ma'am.

Q All right.

And there's a whole another interview with Mr. Dixon. Certainly not as long. And -- and you said that you think he might've said he wasn't in the state, right?

A I don't know if I said that.

Q Okay. Do -- do you recall?

A I remember he did not give a statement. Now, what he did say, I can't recall at this time exactly what he said.

Q All right.

I believe those are all of the questions I have. Thank you.

A Yes, ma'am.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. SCOTT:

Q You said Mr. Dixon declined to give you a statement?

A Yeah. As far as relevance to the incident, I believe -- I can't recall exactly what he said.

MR. SCOTT: Nothing further.

THE COURT: Anything further?

MS. ZMROCZEK: Yes, Your Honor.

THE COURT: Based on the redirect.

MS. ZMROCZEK: Actually, I'll -- I'll -- I'll wait and do it on our case in chief, Your Honor.

THE COURT: All right.

You may step down.

MR. SCOTT: Thank you.

THE WITNESS: All right.

THE COURT: Next witness.

MR. SCOTT: Your Honor, at this time, the state rests.

THE COURT: Ladies and gentlemen, that is the state's case. We have to take up a matter outside of your presence. So if you'll go to the jury room. Please do not discuss the case.

(The jury exits the courtroom at 3:50 p.m.)

THE COURT: Any matters of law?

MS. ZMROCZEK: Thank you.

Your Honor, at this time, we would move for a directed verdict as to the -- sorry -- pursuant to Rule 19.

And Your Honor, specifically with regards to the attempted murder. The testimony that's in front of you at this point, the substantive testimony was that Mr. Dubose was perhaps hit in the head. And I believe the state even put in a picture of his injury.

Your Honor, there was no testimony about a skull fracture. There was no testimony about any long-term injuries. And, Your Honor, I think that at this time -- and I'm relying on State's 32, Your Honor. I would argue that the best evidence, as far as -- as far as the attempted murder really results in an assault and battery third degree, which is a lesser included offense of this charge. And I believe that that's what the evidence shows in this case for that -- for that charge. So for that reason, Your Honor, we would respectfully make that motion.

THE COURT: Attempted murder is performance of an act or acts which tend but failed to kill a human being when such acts are done with expressed malice with the deliberate intent to kill. Locking someone in the trunk of a car and setting it on fire would constitute -- which would constitute murder, in most instances, certainly is -- would be sufficient evidence of intent to kill, specific intent to kill for the jury to consider whether the defendant is guilty of attempted murder. The motion is denied.

MS. ZMROCZEK: Thank you. At this time, we would also renew our previous motions.

THE COURT: Such as what?

MS. ZMROCZEK: The motions for mistrial, the motions for -- sorry. We would previous -- we would make sure to renew all of our previous objections. I understand that the Court has ruled. But often at times at this stage, the Court of Appeals would like us to make sure that we renew all of our objections. So that's simply what I'm doing at this time, Your Honor.

THE COURT: Okay. So noted.

MS. ZMROCZEK: Thank you.

THE COURT: Okay. Anything else before we proceed with the defense's case?

Do you want me to question Mr. Dixon anymore on his decision to testify or not testify?

MS. ZMROCZEK: I -- I believe that in light what -- the previous inquiry, Your Honor, I think he has made a determination or decision.

THE COURT: All right.

Mr. Dixon, if you would come around here one more time.

All right.

Sir, you are still under oath. With continuing the conversation we had yesterday. We have now reached a point in the trial where it is

time for you to present your defense. And you have the right to claim the protections given to you by the Fourth Amendment of the Constitution, which says that you -- no person can be compelled to be a witness against themselves. You remember us talking about that yesterday?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

And at that time, you indicated that you wanted to speak further with your lawyer and consider further whether or not you wanted to testify?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, whether or not you testify is a decision that you must make being fully aware of your right to testify and not testify and all of your rights referenced in the Fourth Amendment to the Constitution.

Understand? Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And have you made a decision at this point as to whether you want to testify?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And what decision is that?

THE DEFENDANT: I would like to testify.

THE COURT: All right.

Very well. Do you need to talk to anyone else any more about that?

THE DEFENDANT: Excuse me?

THE COURT: Do you need to talk with anyone any more about whether or not you should testify?

THE DEFENDANT: No, Your Honor.

THE COURT: All right.

Very good. You may be seated.

MS. ZMROCZEK: And Your Honor, I talked to the deputy. And he said that he would remove the leg shackles for the walking back and forth to the -- to the podium. And I do have -- I just need to -- I'm trying to look for it while I'm talking and it's making -- I'm not being very productive. So I do need to -- to grab one more piece of evidence that I do need to admit, Your Honor. I just need about five minutes to find it. Probably not even that long.

THE COURT: Okay.

MS. ZMROCZEK: Thank you.

(Pause in proceeding.)

MS. ZMROCZEK: Your Honor, the state has graciously allowed me to use copies of the evidence that I was looking for. I -- I -- it's